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1 B. Black
2 Internet advertising market and was backing out
3 e-commerce revenue in some way.

4 She may have been estimating the
5 relative contributions of the two because as I
6 recall, AOL did not itself provide that
7 breakout. They lumped the two together, so she
8 may be estimating that each of them is 50
9 percent of the total of Internet advertising and
10 e-commerce revenue.

11 **Q. But that's her guess as to the split,**
12 **right?**

13 MR. FOX: Objection.

14 A. I am speculating that this is her
15 guess as to the split because I believe that
16 AOL, that America Online at that time did not
17 provide the split. It bundled the numbers
18 together.

19 **Q. But you haven't seen this before and**
20 **I know we're trying to move on and not waste too**
21 **much time on this and so I guess my question is,**
22 **these numbers, we can spend a lot of time on**
23 **them and I have, and we can break it out also by**
24 **looking at the report and getting a better,**
25 **through the report, getting a better**

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1 B. Black
2 well shrink rather than, rather than grow and
3 I'd want to understand the basis for why another
4 analyst was projecting that it was, was going to
5 grow and then I might have an opinion on whether
6 that was reasonable.

7 **Q. You viewed the online advertising**
8 **market in January of 2001 as being a maturing**
9 **market?**

10 A. Certainly compared to the late 1990s,
11 right? So in the late 1990s we had annual
12 growth rates on the order of 100 percent as
13 we've seen in the prior exhibit that you showed
14 me and that was, you know, clearly slowing down
15 and people were projecting 25 percent annual
16 growth going forward. That's maturing relative
17 to the late 1990s, yes.

18 **Q. But I mean my daughter's**
19 **two-and-a-half and she's maturing every day. I**
20 **mean as a -- I'm not sure that -- is there any**
21 **meaning to -- I mean everything is maturing,**
22 **right, as time goes forward.**

23 **So is there anything other than the**
24 **obvious and tautological application of the word**
25 **"maturing" that you're trying to use?**

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1 **B. Black**
2 **understanding of what these numbers mean and I**
3 **don't think it's fruitful for us to spend the**
4 **time here today because you haven't looked at**
5 **this report before, and but my question is,**
6 **would looking at this report and the numbers**
7 **that are here in any way be helpful in informing**
8 **your opinion as to whether or not the numbers**
9 **that you have attributed to Kiggen in Table 2**
10 **are reasonable?**

11 MR. FOX: Objection. Asked and
12 answered.

13 A. I think my answer was yes, it would
14 potentially be relevant and I'd want to
15 understand the basis for Mary Meeker projecting
16 that, off the top of my head, that AOL would
17 capture looks like about 55 percent of the
18 growth over this time period.

19 Now 55 percent isn't 70, but it's
20 still a very large number and I'd, you know, in
21 effect want to understand the basis for that
22 because that would be highly unusual in any
23 maturing market.

24 It would be a more normal expectation
25 that the market share of the market leader might

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1 **B. Black**
2 MR. FOX: Objection.
3 Well, I think he told you -- his
4 answer stands. I mean I think he gave you
5 his answer.

6 Objection.

7 MR. GESSER: I think he sees the
8 problem with his answer, so I just want
9 to...

10 A. I think I may now be in the realm of
11 aging rather than maturing, but let's leave that
12 aside.

13 (Laughter.)

14 A. AOL clearly was a leader in figuring
15 out how to sell online advertising. No question
16 about that. They sold a lot of it for real,
17 even if you put aside the stuff that they faked.

18 But that kind of ability was likely
19 to be, at least in part, copyable so I would
20 think at the time sort of a base expectation
21 would be that it would be hard for AOL to
22 maintain its first mover or early mover
23 advantage and that they would be doing quite
24 well to hold their share of this still rapidly
25 growing market and doing extraordinarily well to

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1 B. Black
 2 substantially expand their share of this rapidly
 3 growing market.
 4 And I'd in effect want to understand
 5 the basis for why people would expect a rapid
 6 expansion of their share rather than expect them
 7 to fight to hold it against new competition.
 8 Most markets don't work that way.
 9 **Q. And do you know how the online**
 10 **advertising market has in fact evolved in terms**
 11 **of the concentration of revenue by company?**
 12 A. I have not examined that question.
 13 We know that Google's market share is
 14 far higher than it was and AOL's is far lower
 15 than it was.
 16 **Q. But as between Google and everybody**
 17 **else, do you have a sense of how concentrated**
 18 **Google's share is?**
 19 MR. FOX: Objection.
 20 A. I do not.
 21 **Q. Do you have a sense as to whether**
 22 **Google's concentration of the market share in**
 23 **online advertising is in any way -- whether**
 24 **Google's share of the total online advertising**
 25 **market is consistent with the range of**

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1 B. Black
 2 **right about the range of concentration that**
 3 **would exist in one company but were simply wrong**
 4 **about who would have that concentration when**
 5 **they said it was AOL and it turned out to be**
 6 **Google?**
 7 MR. FOX: Are you asking him whether
 8 these analysts considered an analysis of
 9 market share of AOL and Google and picked
 10 AOL over Google and they did that
 11 correctly?
 12 Is that -- I don't understand the
 13 question.
 14 MR. GESSER: Okay. Well, Google had
 15 no market share at that time so that's not
 16 what I'm asking.
 17 MR. FOX: So how could that
 18 comparison be made then?
 19 BY MR. GESSER:
 20 **Q. Do you understand my question?**
 21 MR. FOX: I don't understand.
 22 MR. GESSER: I'm not asking you.
 23 MR. FOX: Okay. That's a good thing.
 24 A. I think I do not have enough
 25 information to rule out that possibility.

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1 B. Black
 2 **expectations that AOL would have for the**
 3 **concentration of the market as expressed by**
 4 **analysts about AOL in the 2001 time frame?**
 5 MR. FOX: Objection.
 6 A. I do not have enough information to
 7 form an opinion.
 8 **Q. Okay. So is it possible that**
 9 **analysts were right that there would be a high**
 10 **concentration in one company of the market share**
 11 **of online advertising but they were just wrong**
 12 **as to which company that would be?**
 13 MR. FOX: Objection.
 14 A. I think I would be speculating
 15 because I just don't have the numbers available
 16 to me.
 17 **Q. But by asking isn't it possible, I'm**
 18 **sort of -- I'm asking you to speculate.**
 19 **I mean is it -- as you sit here**
 20 **today, can you think of any -- well, as you sit**
 21 **here today, is it possible that Google has**
 22 **accumulated a significant enough market share of**
 23 **the online advertising market such that analysts**
 24 **in 2001 who were predicting a concentration of**
 25 **online advertising revenue in one company were**

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1 B. Black
 2 **Q. Fine. All right.**
 3 **This report is by Mary Meeker and**
 4 **Richard Bilotti.**
 5 **Do you know how they ranked in terms**
 6 **of their analyst status as compared with Jamie**
 7 **Kiggen and Laura Martin?**
 8 A. My understanding is that Mary Meeker,
 9 like Jamie Kiggen, was an Internet analyst who
 10 was a highly regarded one. Probably more highly
 11 regarded than Jamie Kiggen.
 12 I don't believe that she was a media
 13 analyst so I wouldn't put her head to head, in
 14 what I know about analyst rankings, with Laura
 15 Martin.
 16 I have no information about Richard
 17 Bilotti.
 18 **Q. But Mary Meeker, do you know what --**
 19 **she wasn't a media analyst. Do you know what**
 20 **she was I mean in terms what her area of**
 21 **expertise was?**
 22 A. My understanding is that she was an
 23 Internet analyst at least in substantial part.
 24 **Q. Okay. So when talking about AOL**
 25 **revenue as -- America Online revenue as opposed**

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1 **B. Black**
2 **to the Time Warner revenue, that would be within**
3 **her area of expertise as you understand it?**
4 A. Yes.
5 **Q. Okay. If you take a look at page 17**
6 **of this report --**
7 A. Of her report.
8 **Q. Yeah, the report you have in front of**
9 **you, which is Dayton -- I'm sorry, Black-7.**
10 MR. FOX: You have Dayton on the
11 brain.
12 MR. GESSER: Yes, unfortunately.
13 A. Okay.
14 **Q. If you go down, last set of numbers**
15 **on the page has AOL revenue broken out. It's**
16 **got a fourth quarter estimate of 2152.9.**
17 A. Yup. Okay.
18 **Q. You've just done a calculation.**
19 **Are you doing quarter-over-quarter**
20 **growth? Is that what you just did?**
21 A. Yes.
22 **Q. And what did you get?**
23 A. 9.0 percent for fourth quarter of
24 calendar 2000 over third quarter of calendar
25 2000.

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1 **B. Black**
2 A. Yes.
3 **Q. Okay. So that 11 percent number is**
4 **wrong; is that right?**
5 A. Correct.
6 **Q. What's the right number?**
7 A. To the nearest percentage point,
8 seven percent and I think I would agree to
9 delete the adjective "shocking."
10 **Q. Okay. So now looking at Footnote 6.**
11 A. Yes. We've now resolved the puzzle
12 that I had, which is I couldn't find a basis for
13 the 2.2 billion number.
14 We now have a basis for the 2.2
15 billion number.
16 **Q. Okay. So that would need to be, and**
17 **we don't need to wordsmith it now, you can just**
18 **delete the --**
19 A. I think I would say remove the
20 footnote.
21 **Q. Okay. So let's cross that out.**
22 A. I'm happy to cross that footnote out.
23 It was a puzzle which we have now resolved.
24 **Q. We've been talking a bit about this**
25 **Fidelity report which is the basis for a number**

1 **B. Black**
2 **Q. Okay. Then you don't have a view as**
3 **to -- I think that was well within the range of**
4 **numbers that you don't have a view as to whether**
5 **that's absurd or unreasonable; is that right?**
6 MR. FOX: Objection. The testimony
7 is what it is.
8 A. I think that would be in the range
9 that I described 10 percent as highly optimistic
10 so let me call 9 percent highly optimistic as
11 well.
12 **Q. And the absolute number, the 2152.9,**
13 **you would describe that as also highly**
14 **optimistic?**
15 A. At that time I would describe that as
16 a highly optimistic number.
17 **Q. Going back to page 9 of your**
18 **report --**
19 A. Okay.
20 **Q. -- while we were fixing numbers, I**
21 **forgot to fix the last number in the text before**
22 **the table.**
23 So "A week later AOL reported fourth
24 quarter 2000 revenue of 2059 million, a shocking
25 11 percent short of Kiggen's estimate."

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1 **B. Black**
2 **of the conclusions that you reach about the**
3 **reasonableness of Jamie Kiggen and Laura**
4 **Martin's public views about certain metrics for**
5 **AOL; is that correct?**
6 A. Certainly part of the basis, yes.
7 **Q. Okay. But the Fidelity report I**
8 **think you know was not public; is that right?**
9 A. That's my understanding.
10 **Q. So why did you use the Fidelity**
11 **report as opposed to one of the actually**
12 **published research reports that Credit Suisse**
13 **made in doing your analysis?**
14 A. The published reports from Credit
15 Suisse during this time frame are quite thin on
16 numbers. We don't see the type of full
17 numerical analysis that you just showed me in
18 the Morgan Stanley Dean Witter report or that we
19 saw in, from CSFB in April of 2001 or that we
20 saw in draft form prepared by Laura Martin I
21 believe on January, the date of January 12th of
22 2001. So I worked with the Fidelity report as
23 the best full statement of the beliefs that
24 underlay the public statements by CSFB.
25 **Q. But you're aware that the Fidelity**

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1 **B. Black**
2 **report itself is not a basis of a fraud claim**
3 **against Credit Suisse in the sense that the**
4 **statements in there, in the Fidelity report, are**
5 **alleged to have been fraudulent and caused harm**
6 **to AOL shareholders? Is that --**
7 MR. FOX: Objection.
8 BY MR. GESSER:
9 **Q. Do you understand that?**
10 A. If I was to put my legal hat on as
11 opposed to my expert hat on, I would agree with
12 that.
13 **Q. So your using -- your use of the**
14 **Fidelity report is illustrative of what you**
15 **think the problems in the published CSFB reports**
16 **which you could not use to do the same analysis**
17 **because they didn't have the underlying data**
18 **that the Fidelity report had.**
19 **Is that a fair characterization of**
20 **your -- the reason you used the Fidelity report?**
21 A. I think that the published numbers
22 had to have a basis in an underlying analysis of
23 the type that you see in Laura Martin's January
24 12th draft or the Fidelity report, or the April
25 report or the Mary Meeker January report, and I

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1 **B. Black**
2 **AFTERNOON SESSION**
3 (Time noted: 1:30 p.m.)
4 THE VIDEOGRAPHER: We're back on the
5 record. The time is 1:30 p.m.
6 This is the beginning of the tape
7 labeled No. 3.
8 * * *
9 BERNARD BLACK, resumed and
10 testified as follows:
11 EXAMINATION BY (Cont'd.)
12 MR. GESSER:
13 **Q. Professor Black, I'm going to ask you**
14 **to turn back to your report, Exhibit 1.**
15 **If you look at page 3 of your report**
16 **under the heading marked "Assumptions."**
17 A. Okay.
18 **Q. It says, "I've been instructed by**
19 **plaintiffs' counsel to make the following**
20 **factual assumptions which are consistent with**
21 **the factual record available to me" and then it**
22 **lists three assumptions.**
23 **The first assumption is that, "During**
24 **the class period, Laura Martin did not believe**
25 **that AOL Time Warner would meet either its**

1 **B. Black**
2 took the Fidelity presentation to be the best
3 contemporaneous expression of what that
4 underlying analysis was.
5 **Q. So turning to page 4 --**
6 MR. GESSER: Fred, you're looking at
7 your watch. What time is it?
8 MR. FOX: It's twenty to one.
9 MR. GESSER: All right. You want to
10 take a break for lunch?
11 MR. FOX: I was just looking at my
12 watch. I mean I --
13 THE WITNESS: Yeah, I think that I
14 was about to say okay --
15 MR. GESSER: Okay. We're moving on
16 to a new topic, so now is a perfect time if
17 you want to take a break.
18 All right. Let's take --
19 THE WITNESS: Let me put this away or else...
20 MR. GESSER: Okay. Sorry.
21 Let's go off the record.
22 THE VIDEOGRAPHER: Going off the
23 record. The time is 12:37 p.m.
24 (Lunch recess taken from 12:37 p.m.
25 until 1:30 p.m.)

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1 **B. Black**
2 **guidance or CSFB's public estimates for revenue**
3 **and EBITDA due to the declining market for both**
4 **traditional non-online and online advertising."**
5 **Is that an assumption that you**
6 **independently sought to test in any way or is**
7 **that something you simply assumed and in the**
8 **course of the work that you did, did not find**
9 **any evidence to the contrary or some other -- or**
10 **is there something else that is a correct**
11 **characterization of that assumption?**
12 MR. FOX: Objection.
13 A. I'm not sure what you mean by test,
14 so there are, you know, internal emails at
15 various points that indicate that -- that are
16 consistent with assumption No. 1 and there are
17 reasonably clear statements that she doesn't
18 think that AOL will meet its guidance, and
19 therefore CSFB's public estimates which were
20 consistent with the guidance for several of the
21 Time Warner divisions.
22 **Q. Well, let me put it this way: If I**
23 **were to ask you to test this theory, this is the**
24 **proposition. A proposition is that Laura Martin**
25 **did not believe, and we can continue with the**

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B. Black

rest of that assumption that is laid for in your expert report, if I asked you to test that assumption, is there anything that you would do to test that assumption that you didn't do in preparing your report?

A. I'm not sure what you mean by test in a sense that we have the statements we have by Laura Martin at the time.

Q. I don't know what you have so that's part of my question.

A. I reviewed a bunch of emails, presumably all the emails that counsel thought was relevant to provide to me about -- containing her views as to how AOL and particular divisions were doing.

I'm not sure how you test --

Q. And you also --

A. -- her beliefs in some other way other than by seeing whether what she wrote mapped against what CSFB stated publicly.

One could of course also read her deposition and I've done that.

Q. So this is an assumption that you were asked to make by counsel that you believed

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to be true based on what you've reviewed.

MR. FOX: Objection.

A. I think I prefer the framing in the report, which is this assumption is consistent with the factual record available to me.

Q. What I'm getting at is, is there any point in me putting documents in front of you to try and show you that this assumption is not a valid assumption or is your response going to be well, it's the assumption I made, I didn't reach any independent conclusion as to whether that assumption is valid?

A. I think I reached the conclusion that this assumption was consistent with the factual record available to me taken as a whole.

Q. Okay. And is that conclusion that you've reached that this assumption is consistent with the factual record as presented to you as a whole, is that something that you are putting forward in your expert report as being one of your findings?

MR. FOX: Objection.

A. I believe I would say no, that I viewed this as being a factual question and so

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B. Black

as an expert, I'm entitled to rely on the facts as they might be developed at trial, but, you know, I don't get to decide what the facts are.

I would not be comfortable making an assumption that I thought was inconsistent with the factual record available to me.

Q. Okay. But you're not bringing to bear any expertise in reviewing emails and reviewing deposition transcripts and drawing factual conclusions based on those materials; is that correct?

A. I agree with that.

Q. And that holds true for both the first assumption which I read to you, as well as the second and the third assumption listed on the top of page 4 of your report?

A. Yes.

Q. Do you have a view as to whether Laura Martin had access to non-public information about the advertising market in January, February, March of 2001?

MR. FOX: Objection.

A. Can you specify a little bit more what you mean about the -- by the, quote, the

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advertising market?

Q. Well, you say, your assumption in one is that Laura Martin did not believe that AOL would meet its numbers due to the declining market for both traditional and online advertising.

So however you mean the traditional and online advertising market in point one, my question to you is, do you believe that Ms. Martin had any non-public information about that market?

A. I have no reason to think that Laura Martin had available non-public information about the state of the advertising market in general.

Her internal emails in January suggest that based on her review of what was happening with other companies, she may have had a view as to how that general downturn had affected them and therefore was likely to affect AOL, and I view that as being kind of a central part of what analysts do, which is take different pieces of information and put them together in an interesting and informative way

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1 B. Black
2 where it might have been that no single piece
3 was unavailable to the public, but she still
4 might have had an interesting and informative
5 analysis of how the pieces fit together.
6 **Q. Okay. So just so I'm clear, leaving
7 aside what her own views of the advertising
8 market were, which clearly you take the view was
9 not public because those views were not
10 disclosed, leaving that aside, she didn't have
11 any metrics, numbers, information about the
12 advertising market, as far as you know, that was
13 not public; is that correct?**
14 MR. FOX: Objection.
15 Time period?
16 MR. GESSER: In the January,
17 February, March 2001 time period.
18 A. I am not aware of her having
19 non-public information, but I don't want to rule
20 out the possibility that some of the information
21 which came to her as a media analyst might
22 otherwise have been, you know, relatively
23 obscure and not fully impounded into share
24 prices.
25 **Q. But you don't know whether that was**

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1 B. Black
2 date.)
3 **BY MR. GESSER:**
4 **Q. If you turn to -- this is, I'm
5 showing you is a, Laura Martin's deposition
6 transcript.**
7 **You indicated I believe that you had
8 read this?**
9 A. I did.
10 **Q. If you look at page, it's a
11 minuscule so there are actually four pages per
12 page, but if you look at page 322.**
13 **(Witness complies.)**
14 A. Okay.
15 **Q. Starting with the question that's at
16 the bottom of page 322, these are questions that
17 occurred at the end of Ms. Martin's deposition
18 testimony.**
19 **Question is:**
20 **"Question: And when you said earlier
21 that in reviewing emails that the national ad
22 market was weak or was in free fall, do you
23 recall giving testimony about statements like
24 that in emails?"**
25 **Answer is:**

1 B. Black
2 **true one way or the other.**
3 A. I guess I want to say I have no
4 affirmative knowledge that she had non-public
5 information. I just don't want to affirmatively
6 state that she had none.
7 **Q. But your conclusions in your report
8 aren't necessarily dependent on the fact that
9 she had non-public information.**
10 A. The opinions in my report do not
11 presume that she had access to non-public
12 information.
13 **Q. But they do depend on her concerns
14 relating to both the traditional and the online
15 advertising market; is that correct?**
16 A. I believe that she had concerns about
17 the advertising market in general and from the
18 record available to me, it's not clear that she
19 was drawing a hard line between traditional,
20 quote, unquote, traditional versus online
21 advertising.
22 **Q. I'm showing you Black Exhibit 8.**
23 **(Defendants' Exhibit Black 8,**
24 **Transcript of deposition of Laura Martin,**
25 **marked for identification, as of this**

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1 B. Black
2 "Answer: Yes."
3 The question is then:
4 "Question: When you were referring
5 to the ad market, what were you referring to?
6 Is that print or online?"
7 Ms. Martin answers:
8 "Answer: It was not online. It was
9 the general ad market that affected most of my
10 stocks so that would have been potentially some
11 television, mostly television, I think actually
12 TV, broadcast television or cable television. I
13 don't know. I can't remember if I was looking
14 at radio or newspaper at the time.
15 "Question: But not online
16 advertising?
17 "Answer: No, I didn't look on online
18 advertising. Jamie did that."
19 Do you remember reading that?
20 A. I read the deposition.
21 **Q. That's not my question.**
22 **Do you remember reading that**
23 **exchange?**
24 A. Do I specifically recall this precise
25 question and answer? No, I don't.

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1 B. Black
 2 **Q. Okay. Now having read this specific**
 3 **precise question and answer, are you still of**
 4 **the view that Laura Martin's concerns related to**
 5 **online advertising as expressed in her emails?**
 6 MR. FOX: Objection.
 7 Can you identify who the questioner
 8 was?
 9 You may answer.
 10 A. I think it is fair to say that as I
 11 understand what is clear and disputed in this
 12 case, that there's no doubt that Laura Martin
 13 had concerns about the impact of what I've
 14 called here the traditional advertising market
 15 on the Time Warner segments that depended in
 16 part on traditional advertising, and I
 17 understand there to be a factual dispute with
 18 some evidence on both sides as to the extent to
 19 which her skepticism also related to the America
 20 Online segment which depended on online
 21 advertising, but not significantly on
 22 traditional advertising.
 23 **Q. And did you conduct your own**
 24 **examination or have you formed a view as to**
 25 **whether that factual dispute is more likely to**

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1 B. Black
 2 **light of developments in the advertising market?**
 3 MR. FOX: Objection.
 4 A. I am generally aware of that, yes.
 5 **Q. In reviewing this email, is there**
 6 **anything that indicates to you that Ms. Martin**
 7 **is talking about anything other than traditional**
 8 **advertising -- strike that.**
 9 **Is there anything in this email that**
 10 **suggests to you that Ms. Martin was talking**
 11 **about online advertising?**
 12 MR. FOX: Objection.
 13 A. There is nothing in this email that
 14 is specifically about online advertising, but
 15 neither is there anything in the email that
 16 specifically excludes online advertising. It's
 17 a more general email.
 18 **Q. If you look at five lines from the**
 19 **bottom it says, "In January the scatter market**
 20 **is still up year over year."**
 21 MR. FOX: I'm sorry. Where you are
 22 you looking?
 23 MR. GESSER: Five lines from the top
 24 of the email.
 25 **Q. It says, "In Jan, the scatter market**

1 B. Black
 2 **be resolved in favor of whether she was**
 3 **referring to traditional advertising or both**
 4 **traditional and online advertising?**
 5 MR. FOX: Objection.
 6 A. I have not.
 7 MR. GESSER: We're up to Black 9.
 8 (Defendants' Exhibit Black 9, Email
 9 dated 1/11/02 from Martin to several
 10 individuals and attached research report,
 11 marked for identification, as of this
 12 date.)
 13 BY MR. GESSER:
 14 **Q. I'm showing you an exhibit marked**
 15 **Black-9, which is an email from Laura Martin to**
 16 **a group of people dated January 11, 2001. It**
 17 **attaches a research report dated January 11,**
 18 **2000, which is incorrectly dated 2000. It**
 19 **should be dated 2001.**
 20 **Have you seen this email before?**
 21 A. Yes, I have.
 22 **Q. Okay. And do you understand that**
 23 **this email is one of the emails which plaintiffs**
 24 **have purported demonstrates Ms. Martin's true**
 25 **belief about AOL's prospects at this time in**

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1 B. Black
 2 **is still up year over year"?**
 3 A. Yes.
 4 **Q. Do you know what the scatter market**
 5 **is?**
 6 A. No. I could speculate but I don't
 7 have a precise knowledge.
 8 **Q. Well, either --**
 9 A. Other than it's related to
 10 advertising and I can guess about, something
 11 about what it might be, but I don't actually
 12 know.
 13 **Q. If you had to guess, would you guess**
 14 **that it is related to online advertising,**
 15 **traditional advertising or both?**
 16 MR. FOX: I don't know that it's
 17 helpful, having the witness guess about
 18 things in emails written by Laura Martin is
 19 going to be helpful to anything here.
 20 MR. GESSER: We can decide whether
 21 it's helpful after he's already given his
 22 guess but...
 23 MR. FOX: Well, if you want him to
 24 sit here -- look, it's your time. If you
 25 want to sit here and have him guess at

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1 B. Black
 2 things, I guess if the witness is willing
 3 to do that, go ahead.
 4 MR. GESSER: What I'd like is for you
 5 to just make whatever objection you're
 6 going to make and then let me ask my
 7 questions.
 8 MR. FOX: That's what I'm trying to
 9 do.
 10 A. Based on the next sentence, it
 11 appears that the scatter market is related to
 12 television advertising and quite possibly to
 13 spot advertising.
 14 Having said that, it's at least
 15 plausible and perhaps likely that rates in
 16 different segments of an overall advertising
 17 market would be related and that if there was
 18 pricing weakness in one segment, it might well
 19 carry over to others since advertisers are
 20 looking for more cost effective ways of reaching
 21 audience rather than less.
 22 **Q. Okay. But that's not my question.**
 23 **My question is, does the scatter**
 24 **market, in your view, relate to online**
 25 **advertising or traditional advertising?**

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1 B. Black
 2 question, but I'm asking you a question.
 3 Can you answer my question?
 4 MR. GESSER: No.
 5 MR. FOX: You cannot?
 6 MR. GESSER: No, I will not.
 7 MR. FOX: You will not.
 8 MR. GESSER: Yes.
 9 MR. FOX: Okay. Well, okay.
 10 BY MR. GESSER:
 11 **Q. Would you agree that the growth**
 12 **trends for traditional and online advertising in**
 13 **2001 would be different?**
 14 MR. FOX: Objection.
 15 A. They certainly could be and I believe
 16 that in fact they were.
 17 **Q. The second assumption that you have**
 18 **at the top of page 4 is that, "While Laura**
 19 **Martin's expertise was primarily on the Time**
 20 **Warner side of AOL Time Warner, she was informed**
 21 **about and prepared forecasts for AOL Time Warner**
 22 **as a whole which showed lower AOL EBITDA than**
 23 **CSFB's published reports."**
 24 **Do you know sitting here which**
 25 **reports that refers to?**

1 **B. Black**
 2 MR. FOX: Objection.
 3 A. I think I said that my speculation is
 4 the scatter market relates to television
 5 advertising.
 6 **Q. Which is what?**
 7 A. In particular, television advertising
 8 would be a component of traditional advertising.
 9 MR. FOX: Before you ask another
 10 question, could I just ask is the
 11 attachment, this January 11, 2000 report
 12 which you said the date is incorrect, is
 13 this -- are you representing this as a
 14 draft or is this something that was
 15 published or --
 16 MR. GESSER: I'm representing it as
 17 being what was attached to the email.
 18 MR. FOX: Okay. But is it a draft or
 19 is it something that was published? You
 20 don't know?
 21 MR. GESSER: I'm asking the question.
 22 MR. FOX: I know, but I'm asking you
 23 a question.
 24 MR. GESSER: Okay.
 25 MR. FOX: I know you're asking him a

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1 **B. Black**
 2 A. Thinking about January 12th, 2001 in
 3 particular, and my guess is that the January
 4 11th draft that's attached to the January 11th
 5 email would be quite similar to the January 12th
 6 draft report that I am thinking about.
 7 MR. FOX: I'll just note for the
 8 record --
 9 A. I don't recall whether she prepared
 10 separate full company forecasts before the April
 11 public report or not.
 12 MR. FOX: I would just note for the
 13 record it says "published..." it doesn't
 14 say reports, it says "...forecasts."
 15 MR. GESSER: Forecasts. I'm sorry.
 16 Did I say reports?
 17 MR. FOX: I think so.
 18 MR. GESSER: Okay. I apologize.
 19 MR. FOX: That's okay. I've done
 20 more than a few things incorrectly in my
 21 time. No problem.
 22 BY MR. GESSER:
 23 **Q. What is the basis for your views as**
 24 **to what Ms. Martin's true beliefs as to the**
 25 **correct EBITDA numbers for AOL were?**

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1 **B. Black**
 2 MR. FOX: Objection.
 3 A. If I'm recalling correctly, she has a
 4 draft January report that has EBITDA numbers in
 5 it.
 6 MR. GESSER: We're up to Black-10.
 7 (Defendants' Exhibit Black 10, Email
 8 dated 1/12/01 from Martin to Kiggen and
 9 Watters, marked for identification, as of
 10 this date.)
 11 BY MR. GESSER:
 12 **Q. I'm showing you Black-10, which is an**
 13 **email from Laura Martin to Jamie Kiggen and**
 14 **Catherine Watters CC'ing Patrick Wang dated**
 15 **January 12th 2001.**
 16 **I'll give you a second to review it.**
 17 **(Document review.)**
 18 A. Okay. I've seen this before.
 19 **Q. You've seen this before. Okay.**
 20 **And do you view this email as being**
 21 **one of the emails that illustrates Laura**
 22 **Martin's true non-public beliefs about AOL?**
 23 MR. FOX: Objection.
 24 A. Yes.
 25 **Q. And in her internal emails like this,**

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1 **B. Black**
 2 **As between the \$60 to \$65 number and**
 3 **the \$70 to \$75 number, I believe your report**
 4 **assumes that Ms. Martin's true belief is the \$60**
 5 **to \$65 number and that the \$75 to \$80 number**
 6 **that was in her public reports was not her true**
 7 **belief.**
 8 **Is that a fair reading of your**
 9 **report?**
 10 MR. FOX: Objection.
 11 A. No. I want to be -- in a couple of
 12 respects.
 13 **Q. Sure.**
 14 A. First, I take the CSFB public number
 15 to be centrally, call it Jamie Kiggen's number
 16 is the first named analyst and not to be Laura
 17 Martin's number as such. Her name is on the
 18 report but it's centrally his report. At least
 19 that's how I think about it.
 20 **Q. Because his name is on the top?**
 21 A. Because his name is on the top, all
 22 right?
 23 **Q. Okay.**
 24 A. In the same way that I think of the
 25 Morgan Stanley report that we've reviewed

1 **B. Black**
 2 **it's your view that she had reason to be more**
 3 **candid than she was allowed to be in her public**
 4 **research reports?**
 5 MR. FOX: Objection.
 6 BY MR. GESSER:
 7 **Q. Is that correct?**
 8 A. It's a compound question so if you
 9 wanted to break it down, I might be able to
 10 answer it in pieces.
 11 **Q. Let's take, for example, the price**
 12 **target.**
 13 **In this email she indicates that she**
 14 **could justify a price target between \$60 and \$65**
 15 **a share. \$60 or \$65 for AOL; is that correct?**
 16 A. Yes.
 17 **Q. And at the time or around this time,**
 18 **Credit Suisse First Boston's price target for**
 19 **AOL was what?**
 20 A. \$75 I believe.
 21 **Q. Okay. It was higher. Whatever it**
 22 **was. \$80 or \$75, whatever it was. Okay.**
 23 A. It was either \$75 or \$80 and it was
 24 higher -- and that's higher than \$60 or \$65.
 25 **Q. Okay. You and I can agree on that.**

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1 B. Black
 2 earlier as a Mary Meeker report.
 3 And --
 4 **Q. Do you think that's the way the**
 5 **market views it?**
 6 MR. FOX: Objection.
 7 A. My sense would be that given that
 8 Laura Martin was a media analyst who came out of
 9 Time Warner and Jamie Kiggen was an Internet
 10 analyst who was originally covering AOL, that
 11 investors might expect some division of
 12 responsibility in the preparation of a detailed
 13 forecast such as the one that goes public in
 14 April.
 15 I don't know that I'd want to be
 16 firmer than that in having a view about what
 17 investors would think about a report with
 18 multiple names on it.
 19 Then I think that I am not
 20 comfortable saying that I think I know what
 21 Laura Martin's true views were at this time.
 22 This was a draft report that she proposed to put
 23 out into the public domain, but it might well
 24 have been that she was skeptical that these
 25 numbers were numbers that AOL was likely to

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1 B. Black
2 achieve as well.
3 Some of the email traffic makes me
4 think that in some sense she's saying, "Well,
5 here's a set of numbers but I really think --
6 what I really think is going to happen is below
7 those numbers," and so I'm not comfortable
8 saying this is what she believed, this being the
9 exhibit to the email that you've just put in
10 front of me.
11 It's certainly closer in its overall
12 company valuation to what I infer she believed,
13 but I'm not sure that the individual numbers are
14 something that if you said look, you know, you
15 get one shot at predicting AOL TW and you get a
16 gazillion dollars if you get it right and you
17 can retire in luxury for the rest of your life,
18 and you get nothing if you get it wrong, that
19 these would be the numbers that she would come
20 up with.
21 **Q. And is that partly based on the fact**
22 **that you think she is more likely to be candid**
23 **in internal emails with Kiggen and Watters than**
24 **would be afforded to her through the**
25 **dissemination of public research reports in**

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1 B. Black
2 those considerations are, I can. And as I said,
3 I think there's some evidence in the email
4 traffic that that was the case.
5 I don't have a view that the text of
6 the email messages was anything other than her
7 honest opinions.
8 **Q. So just so I understand, even this**
9 **report here which is attached, this draft report**
10 **which has the \$60 price target which has got her**
11 **name on top, you view even this report as**
12 **possibly not being a true reflection of her**
13 **beliefs? Is that right?**
14 MR. FOX: Objection. I think he
15 answered the question.
16 A. I would certainly not want to rule
17 out the possibility that this is also not a true
18 reflection of her beliefs.
19 **Q. Ruling out the possibility and having**
20 **reached a view are two different things, so I'm**
21 **asking you whether you have a view sitting here**
22 **today as to whether if this report had been the**
23 **report that was issued by Credit Suisse First**
24 **Boston as opposed to the actual report that was**
25 **issued whether you would still believe that the**

1 B. Black
2 **which she and Jamie Kiggen were responsible for**
3 **coverage of AOL?**
4 MR. FOX: Objection.
5 A. It's consistent with my understanding
6 of the factual record that she might have had
7 and might have conveyed in emails a personal
8 view which was more negative than her proposal
9 for a public stance.
10 **Q. Can you think of any reason why she**
11 **would have -- why she -- any reason she would**
12 **have to be not candid about her true opinion in**
13 **internal emails?**
14 MR. FOX: Objection.
15 A. Well, the exhibit is intended for
16 potential public distribution. It's not
17 intended for purely internal distribution.
18 So part of my answer would be even if
19 the internal email was intended to be entirely
20 her full private views, the proposed to be
21 public numbers attached to it would take into
22 account, might well take into account other
23 considerations and therefore might not reflect
24 her best estimate.
25 And if you want me to talk about what

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1 B. Black
2 **reports issued by Credit Suisse First Boston**
3 **were misleading because they didn't disclose the**
4 **true beliefs of Laura Martin?**
5 MR. FOX: Objection.
6 A. I did not form that opinion. I do
7 not hold that opinion.
8 But your question three questions
9 back was different; was was I assuming that this
10 was her honest belief and I'm not assuming that
11 either.
12 **Q. Nor, though, are you assuming that it**
13 **wasn't her honest belief.**
14 A. I am not assuming that the January
15 12th projections were not her honest belief, but
16 I'm not comfortable going so far as saying I'm
17 comfortable that they were.
18 **Q. Do you have a view as to what the**
19 **market reaction would have been had this report**
20 **been issued on January 12th, 2001 instead of**
21 **what was actually issued by Credit Suisse?**
22 MR. FOX: Objection.
23 A. I formed an overall view that the
24 public release by CSFB of opinions such as those
25 reflected in the January 12th draft and which

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1 B. Black
 2 reflected Laura Martin's true views would have
 3 been likely to impact AOL's share price.
 4 I didn't try to pin that down to a
 5 particular impact of a particular statement on a
 6 particular day because that was going beyond my
 7 role in this case.
 8 **Q. So how did you reach that conclusion**
 9 **that if CSFB had publicly provided the forecasts**
 10 **and opinions consistent with the private views**
 11 **of Ms. Martin and Mr. Kiggen, that that likely**
 12 **would have been important to investors and**
 13 **affected AOL's share price?**
 14 MR. FOX: Objection.
 15 A. I think that that was based on a
 16 judgment that at some point, maybe as early as
 17 January of 2001, Laura Martin did not think that
 18 AOL would meet its 40 and 11 guidance.
 19 At some point, though the earliest
 20 documents I have date from March of 2001, Jamie
 21 Kiggen also was doubtful that they would meet
 22 the CSFB published numbers, which might imply
 23 that he was doubtful that they would meet their
 24 guidance.
 25 I think that a statement by two

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1 B. Black
 2 those broader trends, that it would likely have
 3 been significant to investors' overall opinions
 4 for major analysts to have said in effect, "We
 5 think AOL isn't going to meet its guidance
 6 because of the effect of the -- you know, "We
 7 think the national advertising slowdown is going
 8 to have more of an effect on AOL than they say
 9 it's going to have and we think they're not
 10 going to meet their guidance."
 11 **Q. That's your opinion.**
 12 A. That's my opinion.
 13 **Q. And what scientifically tested**
 14 **methodology did you use to reach that opinion?**
 15 A. I was not trying to reach --
 16 MR. FOX: Objection.
 17 A. -- a percentage estimate of by how
 18 much a particular statement would have affected
 19 share price.
 20 I was trying to form a judgment about
 21 whether given this general background of what
 22 was out there in the market, whether a
 23 significantly different statement by highly
 24 regarded analysts would have been likely, and I
 25 don't think I can make a stronger statement than

1 B. Black
 2 prominent analysts or perhaps by Laura Martin
 3 alone, though that wasn't within the realm of
 4 what was going to happen, that they did not
 5 think that AOL would meet its 40 and 11 guidance
 6 would be likely to have had a significant impact
 7 on investors' overall views based on what I know
 8 about what other information was in the market
 9 at the time.
 10 **Q. I just think you just restated your**
 11 **conclusion.**
 12 **I'm asking you how did you reach that**
 13 **conclusion.**
 14 A. It would be my judgment that in an
 15 environment in which the overall national
 16 advertising market was weak, the online
 17 advertising market was certainly less strong,
 18 perhaps weak, certainly getting worse as time
 19 went on, in which AOL was saying often and
 20 loudly, "We don't care what's happening to the
 21 overall market, it isn't impacting us, we're
 22 going to meet our guidance, we're highly
 23 confident we're going to meet our guidance," and
 24 in which investors would have been unsure about
 25 the extent to which AOL would be affected by

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1 B. Black
 2 that, would have been likely to affect share
 3 price by significantly affecting the overall mix
 4 of information.
 5 **Q. Okay. And so what did you do?**
 6 A. I tried to become informed about what
 7 AOL was saying publicly. I tried to become
 8 generally informed about news stories about AOL
 9 during the time period and I tried to become
 10 generally informed about the views of other
 11 analysts.
 12 **Q. Okay. And then with that**
 13 **information, did you test to see what happened**
 14 **if other similarly ranked analysts released**
 15 **negative news about AOL and what effect that had**
 16 **on AOL's share price?**
 17 A. I did not. I viewed that as being
 18 outside my role in this case.
 19 **Q. So if you didn't do that, what leads**
 20 **you to believe that a disclosure by Laura Martin**
 21 **would have a negative impact on AOL?**
 22 **I mean other than your guess or your**
 23 **impression, I'm just not sure what you did that**
 24 **requires any either analysis or expertise.**
 25 MR. FOX: Objection.

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A. I think I view myself as, you know, call it being generally knowledgeable about market efficiency and what kinds of information are likely to matter. So I don't think it, for example, mattered much that, you know, one more analyst or one more pair of analysts was willing to go along with AOL's guidance for 2001 and willing to put out optimistic five-year forecasts for AOL's future growth.

Against the background of that's what AOL was saying and that's what other analysts were doing for CSFB to have said, "Gee, you know, we just don't believe it, we think that the ad slowdown is going to have a bigger effect than AOL is saying," would be likely to have made a difference. That's against the background of what will AOL is saying and what other analysts are saying.

Conversely, if AOL is saying this and every other analyst is saying, "They ain't going to make it," and at some point Laura Martin and Jamie Kiggen said, "Well, I guess they're not going to make it, we're going to move over to here," everybody else is there anyway except the

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company. That would be far less likely to have a substantial impact on the market price.

I don't know how you prove that. I call it an informed judgment about financial markets.

Q. Clear you don't know how to prove that.

MR. FOX: Objection.

BY MR. GESSER:

Q. But you haven't read the academic literature on how and when analysts impact stock prices; is that right?

MR. FOX: Objection.

A. I am not an expert on that literature.

Q. And you haven't read the cases on, the case law on how analysts -- courts view analysts' impact on stock prices.

MR. FOX: Objection.

A. That's correct.

Q. And you didn't look to see whether there are instances during this time frame in 2001 where analysts gave negative views about whether AOL was going to hit its guidance and

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looked to see on those days whether AOL stock price reacted negatively as compared to an index of other companies that may behave the same as AOL with respect to market trends or industry-wide trends.

MR. FOX: Objection.

A. I took that to be within the scope of the engagement of Scott Hakala and outside my scope.

Q. So you didn't do it.

A. I did not do it.

Q. And so in light of all that, I'm sort of baffled as to in what sense you are providing any expert opinion on this particular issue as to what would have been the impact on AOL's share price had a disclosure, leaving aside that I don't even know what that disclosure would look like, but whether a disclosure by Laura Martin would have had an impact on AOL's share price.

MR. FOX: Objection.

A. I formed, I think, a qualitative opinion based on the factors I've just described as to a likely impact of information about the

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views of prominent analysts that is consistent with what I know about the academic literature on the impact of analysts' forecasts and consistent with what I know about financial markets and market efficiency in general.

As you pointed out in your question, unless you specify sort of a precise statement on a precise date, it would be -- there would be some range of uncertainty in an effort to quantify that impact and I did not attempt to do that.

Q. Do you believe that you have a superior expertise to make that general conclusion that a disclosure by Laura Martin of her true beliefs in AOL would have some impact, although unquantifiable from your point of view, some impact on AOL's share price?

MR. FOX: Objection.

Superior to whom?

MR. GESSER: Judge Gertner.

MR. FOX: Objection.

A. Several instances during this period in which news comes out about AOL and its stock price reacts fairly sharply on the order of a

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1 B. Black
 2 ten percent reaction.
 3 **Q. Is there an answer to my question?**
 4 A. I'm getting there.
 5 **Q. Okay. Big windup.**
 6 A. It is plausible to me that if a
 7 respected analysts had said we think X is going
 8 to happen, that that would have had a price
 9 impact that would have been some portion of the
 10 actual observed impact when X in fact happened.
 11 And so once it -- so let's put it
 12 this way: Once it becomes clear that AOL is not
 13 likely to meet its guidance, and I would say
 14 that becomes clear at least on the revenue line
 15 when it issues its second quarter of 2001
 16 report, it's share price drops on the order of
 17 10 percent when that news report comes out, is
 18 it likely that if credible analysts said
 19 somewhat earlier than that, "We don't think
 20 they're going to make their projections," that
 21 that would have had an impact of some fraction
 22 of the 10 percent? Yes, my judgment is that
 23 would be likely.
 24 **Q. That's your answer to my question?**
 25 A. I believe so.

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1 B. Black
 2 financial markets, I do valuations, I've looked
 3 at the data and I take a federal judge not to be
 4 an expert in those areas.
 5 But it's not that I know exactly what
 6 his expertise is because I don't.
 7 **Q. Her.**
 8 A. Her expertise. That shows you how
 9 much I know.
 10 **Q. When we're talking about -- we've**
 11 **been talking about a hypothetical disclosure by**
 12 **Laura Martin and what impact it would have on**
 13 **the stock price.**
 14 **Have you thought at all about what**
 15 **that disclosure might look like?**
 16 MR. FOX: Objection.
 17 A. Yes.
 18 **Q. Okay. What would that disclosure**
 19 **look like?**
 20 A. I think you'd have to pin it down to
 21 particular points in time so I'm not comfortable
 22 answering the question phrased that generally.
 23 **Q. Well, let's take the date of the**
 24 **email that you have in front of you.**
 25 **So January 12th, 2001, what would a**

1 B. Black
 2 **Q. My question is, do you have superior**
 3 **expertise to Judge Gertner in making that**
 4 **conclusion?**
 5 A. Oh, I didn't understand what the
 6 reference to Judge Gertner was.
 7 **Q. Okay.**
 8 MR. FOX: I'm just lost.
 9 A. Now I don't understand the question
 10 at all.
 11 **Q. The question is, this conclusion that**
 12 **you're reaching based on not having been -- not**
 13 **being an expert on the literature on the impact**
 14 **of analyst statements on stock prices, not being**
 15 **an expert on the case law in this area and not**
 16 **having done any quantitative analysis, whatever**
 17 **expertise you're bringing to that, to the**
 18 **question of whether a disclosure by Laura Martin**
 19 **would have had an impact on AOL's stock price,**
 20 **I'm asking whether you have superior expertise**
 21 **to make that conclusion than Judge Gertner.**
 22 MR. FOX: Objection.
 23 A. I would imagine so, yes.
 24 **Q. Because?**
 25 A. Because I'm knowledgeable in

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1 **B. Black**
 2 **disclosure, in your view, an accurate and**
 3 **correct disclosure from Credit Suisse say that**
 4 **the actual reports that were issued by Credit**
 5 **Suisse in this time frame did not say?**
 6 A. I think I'd want to -- so one thing
 7 they would certainly do is move in the direction
 8 of the attachment, the January 12th attachment.
 9 As I said earlier, it might be that
 10 her true best estimate was more negative than
 11 what's reflected in that attachment. They
 12 certainly would be moving in that direction.
 13 **Q. When you say -- what would be moving**
 14 **in what direction?**
 15 A. Relative to what CSFB's public
 16 forecasts were.
 17 **Q. We're operating at a level of**
 18 **generality that I don't think is helpful, so why**
 19 **don't you tell me what exactly, what would the**
 20 **price target on the face of the report say?**
 21 MR. FOX: Objection.
 22 A. I actually don't think that I know
 23 what her best estimate would have been.
 24 We know that what's in the January
 25 12th report are several methods that produce a

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1 B. Black
2 price target of \$60 to \$65, but those are also
3 based on largely accepting AOL's guidance at
4 least for 2001, and it's not clear to me that
5 she believed at that time that AOL was going to
6 meet its guidance for 2001 as opposed to she
7 wasn't willing to come out publicly and say they
8 weren't at that time.

9 So I don't know that I know exactly
10 how to say here's what I think she would have
11 said if you just said hey, we don't care if the
12 company hates you, we don't care about anything
13 other than just what's your best opinion. I
14 don't know that I know that.

15 **Q. Okay. Sorry. Now I'm very confused.**
16 **You don't know what the disclosure**
17 **would look like but you do know that the**
18 **disclosure would have an impact on the stock**
19 **price?**

20 A. Disclosure that said in effect we
21 don't -- you know, we're reducing our price
22 target from \$75 to \$60 or potentially somewhere
23 lower and we think the national ad market is
24 terrible and get -- is bad and getting worse,
25 and that's going to have a substantial impact on

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1 B. Black
2 be relying on Laura Martin on the Time Warner
3 side.
4 And so what I suppose I would expect
5 from Jamie Kiggen would be to take his beliefs
6 about America Online, add them to Laura Martin's
7 beliefs about Time Warner and come up with an
8 overall assessment of the entire company.

9 I don't have evidence from this time
10 period as to what his beliefs about America
11 Online were.

12 We've discussed my analysis of the
13 Fidelity report and it's certainly fair to say
14 that his growth projections were highly
15 optimistic and his market share projections, as
16 I say in my report, were, you know, highly
17 unlikely, I think was the phrase I used, to come
18 true.

19 I did not form an opinion as of
20 January as to what his true beliefs were because
21 I don't have a basis and a factual record for
22 forming that.

23 **Q. Okay. So when you say he should have**
24 **done this, that's your objective view as to what**
25 **you think would have been a proper way for an**

1 B. Black
2 at least the Time Warner segments, and unless
3 there's a sharp rebound in the second half, then
4 we don't see how they're going to meet their
5 projections for 2001, that's the kind of
6 disclosure that I have in mind at this time
7 frame in saying that I think that disclosure
8 would have been likely to have had a significant
9 impact on market price.

10 Now if you move to a later date --

11 **Q. Well, let's stick with this date.**

12 A. Okay.

13 **Q. So you think that would be an**
14 **accurate disclosure of Laura Martin's true**
15 **beliefs at that time.**

16 MR. FOX: Objection.

17 BY MR. GESSER:

18 **Q. A more accurate disclosure.**

19 A. Yes.

20 **Q. What about Jamie Kiggen's beliefs?**

21 A. I approached my report with the view
22 that in large measure Jamie Kiggen was an
23 Internet analyst who was knowledgeable about AOL
24 but wasn't really a media analyst, and therefore
25 was probably relying on Laura Martin or should

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1 **B. Black**
2 **analyst to behave in his position, not what you**
3 **think he needed to do to be consistent with his**
4 **own beliefs about AOL; is that fair?**

5 MR. FOX: Objection.

6 A. No. I think what I was trying to say
7 was, you know, let me put aside the factual
8 dispute over whether Laura Martin was offering
9 views that applied to America Online as well as
10 TW. She was certainly offering views that
11 applied to TW and she was, you know, the
12 in-house TW expert.

13 I think that if Jamie Kiggen were
14 taking the lead role in a report that reflected
15 his or their combined honest beliefs, that would
16 have to combine his honest belief about AOL with
17 her honest belief about Time Warner.

18 I do not have a basis for assessing
19 whether he had an honest belief in January of
20 2001 as to the AOL numbers other than to observe
21 that they were highly optimistic.

22 **Q. But not necessarily more optimistic**
23 **than other analysts who were covering AOL at the**
24 **time?**

25 MR. FOX: Objection.

<p style="text-align: right;">Page 170</p> <p>1 B. Black</p> <p>2 A. Again, I haven't systematically done</p> <p>3 that work.</p> <p>4 Q. And you have no evidence that in</p> <p>5 January 2001, Jamie Kiggen did not believe what</p> <p>6 was -- anything that was said in the research</p> <p>7 reports for AOL; is that correct?</p> <p>8 MR. FOX: Objection.</p> <p>9 A. I think that I don't have information</p> <p>10 in the factual record available to me as to</p> <p>11 statements by Jamie Kiggen as to his beliefs</p> <p>12 during this time period.</p> <p>13 Q. So the answer to my question is yes,</p> <p>14 you have no information that would lead you to</p> <p>15 believe that Jamie Kiggen did not believe the</p> <p>16 research reports that were issued by Credit</p> <p>17 Suisse regarding AOL in January, February 2001.</p> <p>18 MR. FOX: Objection.</p> <p>19 A. I think I want to say I have no --</p> <p>20 there's nothing in the factual record that gives</p> <p>21 me affirmative basis for saying he didn't</p> <p>22 subjectively believe those numbers.</p> <p>23 Q. Okay. So now getting back to my</p> <p>24 original question, which is, what would a</p> <p>25 reasonable disclosure look like in the January</p>	<p style="text-align: right;">Page 171</p> <p>1 B. Black</p> <p>2 2000 time frame that accurately reflected the</p> <p>3 views of Credit Suisse?</p> <p>4 MR. FOX: Objection. Asked and</p> <p>5 answered.</p> <p>6 MR. GESSER: No, he did not answer</p> <p>7 that.</p> <p>8 MR. FOX: Oh, he sure did. He sure</p> <p>9 did. You may have not liked the answer,</p> <p>10 but he sure did answer the question.</p> <p>11 MR. GESSER: I hope he's not going to</p> <p>12 stick with that answer now.</p> <p>13 MR. FOX: Well, you're now saying he</p> <p>14 did answer the question. If you're just</p> <p>15 saying I hope he doesn't stick with it,</p> <p>16 you're saying he answered the question.</p> <p>17 A. I think that the published --</p> <p>18 MR. GESSER: I'll let the witness</p> <p>19 decide whether he wants to stick with his</p> <p>20 answer.</p> <p>21 A. I think that the published numbers in</p> <p>22 January 2001 are not consistent with Laura</p> <p>23 Martin's views and I don't have affirmative</p> <p>24 evidence that they're not consistent with Jamie</p> <p>25 Kiggen's views.</p>
<p style="text-align: right;">Page 172</p> <p>1 B. Black</p> <p>2 So then when you asked me are they</p> <p>3 consistent with CSFB's views, I kind of don't</p> <p>4 know how to answer because I've got two</p> <p>5 different people here.</p> <p>6 Q. And so with a report that was exactly</p> <p>7 the same as the report that was issued but also</p> <p>8 had a dissent effectively from Laura Martha that</p> <p>9 said while I agree with some of the numbers, I</p> <p>10 disagree with the price target that is in this</p> <p>11 report, and I believe the price target should be</p> <p>12 \$60 and I disagree whether AOL is going to meet</p> <p>13 it, all the caveats that exist in her emails, if</p> <p>14 those were disclosed as being Laura Martin's</p> <p>15 views in the report and the report remained as</p> <p>16 it was with Jamie Kiggen's views, would that be</p> <p>17 a full and honest disclosure, in your view, from</p> <p>18 Credit Suisse at that time?</p> <p>19 MR. FOX: Objection.</p> <p>20 A. Framing the hypothetical that way, I</p> <p>21 would have no reason to think that the</p> <p>22 combination of the honest beliefs of Jamie</p> <p>23 Kiggen and the somewhat dissenting beliefs of</p> <p>24 Laura Martin would not be their combined honest</p> <p>25 beliefs. In some sense the question is</p>	<p style="text-align: right;">Page 173</p> <p>1 B. Black</p> <p>2 tautological.</p> <p>3 Q. And what effect do you think that</p> <p>4 kind of report would have on AOL's stock price?</p> <p>5 MR. FOX: Objection.</p> <p>6 BY MR. GESSER:</p> <p>7 Q. Let me step back and ask you, have</p> <p>8 you thought about that question before?</p> <p>9 A. I have not asked myself that</p> <p>10 question.</p> <p>11 Q. Now having asked yourself that</p> <p>12 question in conjunction with me asking you that</p> <p>13 question, do you have a view?</p> <p>14 A. Let me see if I can frame it the</p> <p>15 following way: So instead of having one report</p> <p>16 with two names, we just have two reports. We</p> <p>17 have the Jamie Kiggen report --</p> <p>18 Q. Not what I'm asking.</p> <p>19 A. -- and the Laura Martin report and</p> <p>20 Jamie Kiggen --</p> <p>21 Q. Not what I'm asking.</p> <p>22 A. I'm trying to think my way through to</p> <p>23 an answer to the question.</p> <p>24 MR. FOX: You asked him if he has a</p> <p>25 view. He's trying to give you his view.</p>

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Page 175

1 B. Black
 2 MR. GESSER: Okay.
 3 MR. FOX: Wasn't that your question,
 4 do you have a view?
 5 BY MR. GESSER:
 6 **Q. Okay.**
 7 A. So I'm imagining that this is roughly
 8 equivalent to simultaneous reports; here's the
 9 Jamie Kiggen view and here's the Laura Martin
 10 view, and Jamie Kiggen thinks the world is
 11 wonderful and the price target is \$75 and Laura
 12 Martin thinks the world isn't so wonderful,
 13 especially on the Time Warner side, and thinks
 14 the price target is \$60 and sees a worsening ad
 15 environment. I think it's perfectly plausible,
 16 even likely, that the skeptical views of Laura
 17 Martin would have a price impact.
 18 MR. FOX: Could I just make a
 19 request?
 20 When you're at some kind of breaking
 21 point, can we take a ten-minute break?
 22 MR. GESSER: Okay. We're almost
 23 there.
 24 BY MR. GESSER:
 25 **Q. What if Laura Martin's name had been**

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1 B. Black
 2 **views, would they still be misleading if her**
 3 **name no longer appeared on those reports?**
 4 MR. FOX: Objection.
 5 A. It would seem to me that the report
 6 ought to reflect the beliefs of the writer of
 7 the report about the subject matter of the
 8 report and so what I'm struggling with is okay,
 9 we take Laura Martin's name off but there are
 10 still Time Warner numbers that she doesn't think
 11 are right and do we take those numbers off? And
 12 where do we get different numbers --
 13 **Q. No, no, no.**
 14 A. -- from?
 15 **Q. No, you weren't listening to my**
 16 **hypothetical.**
 17 **My hypothetical includes every --**
 18 **everything is exactly the same except Laura**
 19 **Martin's name doesn't appear on the report.**
 20 MR. FOX: So just so I understand,
 21 Laura Martin still is an analyst with
 22 CSFB --
 23 MR. GESSER: Correct.
 24 MR. FOX: -- and still has the same
 25 views and --

1 B. Black
 2 **taken off of the report entirely?**
 3 MR. FOX: Objection.
 4 A. I'm not sure I understand the
 5 question.
 6 **Q. Would -- you view the Credit Suisse**
 7 **First Boston reports on AOL in the January and**
 8 **February time frame to be misleading because**
 9 **they don't reflect the true beliefs of Laura**
 10 **Martin during that time frame, correct?**
 11 A. Let's take that as an assumption
 12 because I didn't try to form that belief.
 13 I formed a belief that they didn't
 14 reflect her true views.
 15 **Q. Okay. Assuming those were issued**
 16 **exactly as they were issued but instead of her**
 17 **name appearing on the report, her name did not**
 18 **appear on the report, would you have a view --**
 19 **first of all, have you considered that question**
 20 **before?**
 21 A. No.
 22 **Q. Sitting here today, would you have a**
 23 **view as to whether those reports were -- taking**
 24 **as an assumption that they are misleading**
 25 **because they don't reflect Laura Martin's true**

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1 B. Black
 2 MR. GESSER: Correct, everything is
 3 the same.
 4 MR. FOX: Somebody deleted her name
 5 from the report.
 6 MR. GESSER: She deletes her name.
 7 She says, "I don't agree with this. I'm
 8 washing my hands."
 9 MR. FOX: I'm off.
 10 MR. GESSER: I'm off the report."
 11 A. I think --
 12 MR. FOX: Objection.
 13 A. -- I would be puzzled as to the basis
 14 for the report to be issued under Jamie Kiggen's
 15 name 'cause he's not the Time Warner guy, and
 16 that's why I answered the prior question the way
 17 I did.
 18 So I'm imagining Jamie -- Laura comes
 19 to Jamie and says, "Here are my Time Warner
 20 numbers."
 21 And Jamie says, "Oh, no, they're not.
 22 These are the Time Warner numbers."
 23 And Laura says, "Well, if you're
 24 going to use those numbers, I take my name off."
 25 He uses those numbers. I still have

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1 B. Black
2 the question of where did he get his numbers
3 from and does he have a basis, a reasonable
4 basis for honestly believing his Time Warner
5 numbers.

6 So we confirmed that I have no
7 affirmative basis for thinking he didn't believe
8 his own AOL numbers, but I don't know where he
9 gets the basis for believing in Time Warner
10 numbers that are different than her numbers
11 because he's not the Time Warner guy.

12 **Q. I'm sorry. You think that Jamie**
13 **Kiggen substituted his own numbers for Laura**
14 **Martin's numbers on Time Warner and that's the**
15 **reason why they came up with different numbers**
16 **overall?**

17 MR. FOX: Objection.

18 A. I'm trying to understand the
19 hypothetical I think, all right?

20 **Q. But your misunderstand -- our**
21 **misunderstanding of the hypothetical may be due**
22 **to the fact that we have a different view as to**
23 **what actually happened, so let me see if I**
24 **understand what --**

25 MR. FOX: Why don't you just give him

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1 B. Black
2 your hypothetical. I mean it's --
3 whatever. Sorry.

4 MR. GESSER: I think we're making
5 progress here, so let's just see.

6 MR. FOX: Okay. Good.

7 BY MR. GESSER:

8 **Q. Do you believe that the reason why**
9 **Jamie Kiggen and Laura Martin came to different**
10 **numbers on AOL is because Jamie did not adopt**
11 **Laura's numbers on the Time Warner side and put**
12 **in his own numbers?**

13 MR. FOX: Objection.

14 A. In part, yes.

15 **Q. Where are you getting that from?**

16 A. There are value estimates from Laura
17 Martin on January 12th that if you take those
18 numbers and you add them to what as best I
19 understand is Jamie Kiggen's view on AOL, they
20 don't add up to \$75 a share.

21 **Q. Okay. So your assumption that Jamie**
22 **Kiggen did not take Laura Martin's numbers on**
23 **the Time Warner side is not based on your review**
24 **of the transcripts of what both of them said,**
25 **but instead is based on your own calculation of**

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1 B. Black
2 **how the \$75 price target is reached, and you**
3 **don't see how the numbers add up without Kiggen**
4 **substituting his own Time Warner numbers for the**
5 **Time Warner numbers he was receiving from Laura**
6 **Martin; is that correct?**

7 MR. FOX: Objection.

8 A. I think there are several instances
9 where I believe that to be the case, where the
10 numbers for the Time Warner side have gone up
11 relative to what Laura Martin is saying
12 internally for reasons that I can't understand
13 since she isn't becoming more optimistic over
14 time, other than by speculating that Jamie
15 Kiggen didn't like her numbers so he substituted
16 his own.

17 **Q. Okay. Is it possible that there is a**
18 **reason for the discrepancy in your calculations**
19 **that is not attributable to the fact that Jamie**
20 **Kiggen used different numbers than the numbers**
21 **he was receiving for Time Warner from Laura**
22 **Martin?**

23 A. Yes.

24 **Q. Okay. Returning now to --**

25 A. Can we take a break?

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1 B. Black

2 **Q. Yeah, let's take a break.**

3 THE VIDEOGRAPHER: Going off the
4 record. The time is 2:49 p.m.
5 (Recess is taken.)

6 THE VIDEOGRAPHER: We are back on the
7 record. The time is 3:02 p.m.

8 This is the beginning of the tape
9 labeled No. 4.

10 BY MR. GESSER:

11 **Q. Professor Black, before we took a**
12 **break we were going back and forth about Jamie**
13 **Kiggen's use of Laura Martin's Time Warner**
14 **numbers in the combined reports that he and**
15 **Laura Martin produced for Credit Suisse coverage**
16 **of AOL Time Warner in the 2001 time period, and**
17 **I had asked you what your basis for your belief**
18 **was that Mr. Kiggen had altered the Time Warner**
19 **numbers that he received from Laura Martin and I**
20 **think you had answered that you had done a**
21 **calculation of some kind that led you to believe**
22 **that that was the case.**

23 **And my question then to you was, is**
24 **it possible that whatever discrepancy in your**
25 **calculation is due to something other than**

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1 **B. Black**
2 **Mr. Kiggen altering the numbers he received from**
3 **Ms. Martin on Time Warner and I think your**
4 **answer was that it was possible.**
5 **Now my question to you is, do you**
6 **have any other evidence, other than your**
7 **calculation, for the view that Mr. Kiggen in**
8 **January or February of 2001 was altering the**
9 **Time Warner numbers that he received from Laura**
10 **Martin before he combined them with his numbers**
11 **for AOL to put into the joint reports that**
12 **Credit Suisse was issuing for AOL Time Warner in**
13 **that time period?**
14 **MR. FOX: Objection.**
15 **A. Limited to that time period, no.**
16 **Q. So let's just assume for the purposes**
17 **of my next series of questions that Jamie Kiggen**
18 **used his numbers for the America Online division**
19 **and accepted Laura Martin's numbers for Time**
20 **Warner in creating the reports in the January**
21 **and February 2001 time period.**
22 **A. So you're asking me to make an**
23 **assumption which I believe to be counterfactual,**
24 **correct?**
25 **Q. Why do you believe that assumption to**

Page 184

1 **B. Black**
2 **So if I understand the hypothetical**
3 **correctly, it's Jamie Kiggen says, "Okay. I**
4 **know AOL. I don't care what Laura Martin thinks**
5 **about AOL, but I believe her on Time Warner.**
6 **Let me take her Time Warner numbers, let me add**
7 **them to my AOL numbers and let me see what I**
8 **come out to in terms of revenue, in terms of**
9 **EBITDA, in terms of long-term growth, in terms**
10 **of multiples for different segments of the**
11 **business and in terms of overall valuation, and**
12 **let me publish those."**
13 **Now I don't know what that would look**
14 **like. I think it wouldn't look the same as what**
15 **CSFB actually published, but if --**
16 **Q. Why don't you --**
17 **A. -- that hypothetical report --**
18 **Q. Let me stop you there.**
19 **Why don't you think that would--**
20 **MR. FOX: He was in the middle of an**
21 **answer. I mean...**
22 **BY MR. GESSER:**
23 **Q. Okay.**
24 **A. I don't think that that**
25 **hypothetical report -- I would have no reason to**

1 **B. Black**
2 **be counterfactual?**
3 **A. Because I believe that in part he did**
4 **not accept her numbers for the Time Warner side.**
5 **Q. Based on your calculations.**
6 **A. Yes.**
7 **Q. Okay. And to the extent that it's**
8 **counterfactual based on your calculations, I'm**
9 **asking you to accept something as**
10 **counterfactual.**
11 **A. All right.**
12 **Q. Before I ask the next question, I'm**
13 **going to allow you to do whatever it is you**
14 **need to do with your Diet Coke.**
15 **So assuming what we just -- assuming**
16 **what we just agreed was an assumption that you**
17 **understand, if Jamie Kiggen had issued the**
18 **report exactly as it had been issued, the**
19 **reports, exactly as they had been issued in**
20 **January and February of 2001 with the assumption**
21 **that we just discussed holding, would those**
22 **reports, in your view, be misleading?**
23 **MR. FOX: Objection.**
24 **A. I'm not sure I can capture the**
25 **hypothetical.**

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1 **B. Black**
2 **think that that hypothetical report would not**
3 **reflect his true beliefs and I prefer to use**
4 **that phrasing rather than the phrasing of**
5 **misleading.**
6 **Q. Okay. Now why do you think that that**
7 **report would look different than the report that**
8 **was actually issued?**
9 **MR. FOX: Objection.**
10 **A. We need to pin down which report was**
11 **actually issued. So we don't have a full, you**
12 **know, here's a full model report in January that**
13 **I can say oh, here's the report that they**
14 **actually issued.**
15 **Instead they, you know, issued short**
16 **small reports but they didn't issue a full**
17 **report until April, so again, I'm not sure I**
18 **have a complete hypothetical.**
19 **So if you wanted to give me a**
20 **particular report, I can look at that, but**
21 **something comparable to what she's got on**
22 **January 12th, they didn't issue publicly at that**
23 **time.**
24 **Q. That's not my question.**
25 **I'm asking you, you indicated that**

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1 **B. Black**
2 **you thought a report that reflected Laura**
3 **Martin's numbers on Time Warner and Jamie**
4 **Kiggen's numbers on AOL, assuming that Kiggen**
5 **didn't alter Martin's numbers, would look**
6 **different than the reports that were actually**
7 **issued in the January and February time frame.**
8 MR. FOX: Objection.
9 A. Yes.
10 **Q. And I'm asking --**
11 A. That's a fair assumption.
12 **Q. And I'm asking you why. Why do you**
13 **think they would look different?**
14 A. I'm not holding in my head a picture
15 of particular reports during that time frame, in
16 part because they weren't enormously detailed,
17 but it seems to me that at the least they would
18 be likely to look different as to the price
19 target because the price target is going to be
20 the sum of the value of AOL, America Online in
21 your terminology, and the value of TW, and she
22 had a lower view on the value of TW than
23 apparently he did or that would have added up to
24 a \$75 or \$80 price target.
25 **Q. Now you're unassuming the assumption**

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1 **B. Black**
2 consistent.
3 **Q. Because your calculation suggests**
4 **that he couldn't get to his \$75 price target**
5 **without altering her numbers, her Time Warner**
6 **numbers; is that right?**
7 MR. FOX: Objection.
8 A. At least as to the \$75 price target.
9 I have a recollection that the value she was
10 placing on Time Warner was significantly below a
11 value that would have been a component of the
12 \$75 overall value.
13 **Q. Is there anywhere in your report you**
14 **discuss whether Kiggen could have reached his**
15 **\$75 price target using Laura Martin's Time**
16 **Warner numbers?**
17 A. I believe I discuss in the report, if
18 I remember correctly, that -- so I'm looking at
19 the top of page 8. I at least discuss, although
20 I don't have a table associated with this
21 statement, that, "Kiggen instead reported higher
22 numbers in multiples for TW than Martin had
23 provided to him for TW."
24 **Q. Where is that?**
25 A. That's the first carryover paragraph

1 **B. Black**
2 **that we have, right?**
3 **The assumption is that he's taken her**
4 **Time Warner numbers.**
5 A. But I don't -- if he takes all her
6 Time Warner numbers, at the least I don't see
7 how he gets the \$75 price target.
8 There might be other pieces of
9 individual reports that he might not be able to
10 get to either, so I'm trying to figure out what
11 is the hypothetical report that they would have
12 issued.
13 That's why I started to ask well, can
14 you focus on a particular actual report and then
15 I might be able to have a more definite opinion
16 about what it might have said under your other
17 hypothetical assumption.
18 **Q. But you're simply resisting my**
19 **assumption, right?**
20 **My assumption is that he doesn't**
21 **alter her numbers at all and yet issues the same**
22 **report that he issued.**
23 **You're telling me that that's not**
24 **possible?**
25 A. I don't think that it's internally

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1 **B. Black**
2 on page 8.
3 I don't think I say explicitly what
4 your question said, but I was trying to think of
5 where I have a similar concept in my report.
6 **Q. In your report you say that -- all**
7 **right.**
8 MR. GESSER: We're up to Black-11.
9 (Defendants' Exhibit Black 11, "Desk
10 Notes" dated 2/1/01, marked for
11 identification, as of this date.)
12 BY MR. GESSER:
13 **Q. So if you look at the -- this is**
14 **Black 11.**
15 **If you go back to Black 1 for a**
16 **moment --**
17 A. Okay.
18 **Q. -- your report, you say, one of your**
19 **assumptions, No. 2 at the top of page 4 is that,**
20 **"She was informed about and prepared forecasts**
21 **for AOL Time Warner as a whole which showed**
22 **lower AOL EBITDA than CSFB's published reports."**
23 **Do you see that?**
24 A. Yes.
25 **Q. Okay. Looking in February 1st, 2001,**

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1 **B. Black**
2 **Black 11 exhibit, if you look at the third page**
3 **in under "Guidance," the third paragraph says,**
4 **"We are publishing..."**
5 **Do you see that?**
6 MR. FOX: I'm sorry. What page are
7 you on again?
8 MR. GESSER: The third page of the
9 report.
10 MR. FOX: Okay. "Guidance."
11 BY MR. GESSER:
12 **Q. "We are publishing a combined model."**
13 **Do you see that?**
14 A. Yes.
15 **Q. And it's got revenue of \$41.5 billion**
16 **and EBITDA of 10.9.**
17 A. Yes.
18 **Q. And you would agree that is the**
19 **published CSFB reports for revenue and EBITDA**
20 **would be, those numbers would be encompassed by**
21 **what you're talking about in assumption two on**
22 **the top of page 4; is that right?**
23 A. Yes. Although assumption two I think
24 was more general. I would not take it to speak
25 to every published report during this period.

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1 **B. Black**
2 higher.
3 **Q. So when -- so this is an internal**
4 **number that she has for EBITDA which is higher**
5 **than a published number for Credit Suisse for**
6 **AOL.**
7 **So to the extent that is true, that**
8 **is inconsistent with this assumption; is that**
9 **right?**
10 MR. FOX: Objection.
11 A. No.
12 **Q. Why is that not inconsistent with**
13 **this assumption?**
14 A. Because of the difference in time
15 frame. First because of the difference in time
16 frame, which is that the January 12th number is
17 a number that is prepared...
18 So what I'm trying to do is compare a
19 number that was prepared when your last public
20 information was three quarters of 2001 to a
21 published number which was published after full
22 year-end information was available.
23 And what you would want to have in
24 order to see whether a particular forecast was
25 consistent with assumption two is to have both a

1 **B. Black**
2 **Q. Okay. Now turning back to Black-10,**
3 **which is the Laura Martin email to Jamie Kiggen**
4 **and Catherine Watters where she attaches a draft**
5 **report.**
6 A. Okay.
7 **Q. Okay?**
8 **If you go to page 14 of that draft**
9 **report --**
10 A. Okay.
11 **Q. -- Laura Martin has in her own report**
12 **she's drafted, she has her own EBITDA number.**
13 A. Yes.
14 **Q. Do you see that number?**
15 A. Yes, I do.
16 **Q. Okay. What is that number?**
17 A. Her full year EBITDA is 11,023 and
18 that would be in millions of dollars.
19 **Q. Okay. Which is higher than the**
20 **EBITDA number that appears in the February 1st**
21 **2001 report.**
22 A. Mechanically, yes, at an earlier date
23 and higher.
24 **Q. At an earlier date it's higher.**
25 A. It is at an earlier date and it is

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1 **B. Black**
2 forecast and a published forecast that are at
3 effectively the same time, and these are
4 effectively not at the same time and so I'm not
5 comparing the right things.
6 **Q. But you did compare the right things?**
7 MR. FOX: Objection.
8 A. I am -- I don't have a clear picture
9 in my mind of the basis for assumption two,
10 okay, and which specific time periods it refers
11 to.
12 **Q. But sitting here today, you can't**
13 **think of an example where Laura Martin's**
14 **internal EBITDA numbers were actually lower than**
15 **CSFB's published EBITDA numbers?**
16 A. Off the top of my head I am not
17 thinking of specific examples of that that would
18 have been at effectively the same point in time.
19 **Q. Do you know if there were EBITDA**
20 **numbers published by Credit Suisse on AOL around**
21 **the time of this draft report, which is January**
22 **12th, 2001?**
23 MR. FOX: Objection.
24 A. I am not aware of -- I don't have in
25 my head which reports were issued on which date,

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1 B. Black
 2 so if you want to show them to me, please do,
 3 but I don't know if there were published EBITDA
 4 forecasts during January of 2001 prior to AOL
 5 releasing full year 2000 numbers.
 6 **Q. So rather than -- if I represent to**
 7 **you that the January CSFB reports on AOL did not**
 8 **have EBITDA numbers, that wouldn't surprise you?**
 9 MR. FOX: Objection.
 10 A. I would accept that representation.
 11 **Q. Okay. I'm going to represent that to**
 12 **you.**
 13 A. Okay.
 14 **Q. Which means that the closest in time**
 15 **that we have to this internal email in which**
 16 **Laura Martin gives the \$11 billion EBITDA**
 17 **number, the closest one we've got is this**
 18 **February 1st which is...**
 19 A. I would say not really the same time.
 20 **Q. So it's not that -- it's as close as**
 21 **we can get, but it's not helpful because it's**
 22 **too far apart? Is that what you're saying?**
 23 A. Yes, because there was a quarterly
 24 earnings report that intervened between the two
 25 dates.

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1 B. Black
 2 MR. GESSER: Can we mark this as
 3 Black-12.
 4 (Defendants' Exhibit Black 12, "Desk
 5 Notes" dated 1/16/01, marked for
 6 identification, as of this date.)
 7 BY MR. GESSER:
 8 **Q. Before we had been talking about what**
 9 **would happen if Laura Martin's views were**
 10 **published as a dissent in what was otherwise a**
 11 **Jamie Kiggen report for AOL in the January 2001,**
 12 **February 2001 time frame.**
 13 **I think you in answering that**
 14 **question postulated that it would be, in your**
 15 **view, analogous to think of what would happen if**
 16 **two separate reports had been issued; one with**
 17 **Kiggen's views and one with Martin's views?**
 18 **Is that a fair characterization of**
 19 **your testimony?**
 20 MR. FOX: Objection.
 21 A. Basically, yes. I analogize that to
 22 a situation in which sort of we have two
 23 explicitly competing reports; one authored by
 24 Jamie Kiggen and one authored by Laura Martin.
 25 **Q. I think in answering my question you**

1 B. Black
 2 **Q. And that's important.**
 3 A. Yes.
 4 **Q. But as you sit here today, you can't**
 5 **think of where you're getting, for assumption**
 6 **No. 2 on the top of page 4, where you're**
 7 **getting -- where support for this assumption**
 8 **comes in terms of a time comparison between**
 9 **Laura Martin's private EBITDA numbers and CSFB's**
 10 **public EBITDA numbers because it's clearly, in**
 11 **your view, not coming from a comparison between**
 12 **the EBITDA numbers in Black-10 and Black-11.**
 13 A. The support for assumption two on
 14 page 4 of my report is not coming from January
 15 2001, assuming your representation about the
 16 lack of published EBITDA numbers is correct as I
 17 am assuming.
 18 **Q. Do you know where it is coming from?**
 19 A. Off the top of my head, I do not.
 20 **Q. If looking through -- would looking**
 21 **through a report help you?**
 22 A. No. I'd really have to look at, if
 23 you will, internal documents and a fuller set of
 24 published AOL reports, CSFB analyst reports on
 25 AOL.

1 B. Black
 2 **told me you hadn't thought about that until I**
 3 **posed it to you and that you were just thinking**
 4 **about it for the first time in response to my**
 5 **question.**
 6 MR. FOX: Objection.
 7 A. I think I said I hadn't considered
 8 that particular hypothetical and therefore was,
 9 you know, offering an imperfectly formed view.
 10 **Q. You ever seen analyst reports with**
 11 **dissents in them or two analysts from the same**
 12 **firm covering the same company simultaneously**
 13 **issuing different reports?**
 14 MR. FOX: Objection.
 15 A. I am aware that during this period
 16 CSFB had a publication, which I think you're
 17 about to show me, called the Media Daily that
 18 had a more skeptical view about AOL than one
 19 would see in the joint Kiggen-Martin reports.
 20 **Q. Do you think that's responsive to my**
 21 **question?**
 22 A. It's certainly responsive to the
 23 extent that it is not unheard of for this
 24 situation to exist. I would consider it to be
 25 unusual.

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1 B. Black
2 **Q. Are you aware of situations in which**
3 **an analyst report is published in any topic at**
4 **any time in any sector from any company in which**
5 **the analysts break out their separate views, or**
6 **two analysts issue, at the same firm, issue**
7 **simultaneous reports on the same company with**
8 **different views?**
9 MR. FOX: Objection.
10 A. I am not aware of that practice.
11 **Q. And so in determining what effect**
12 **that may have on stock prices, would you agree**
13 **that that is a difficult calculation to do in**
14 **light of the fact that there would be little**
15 **precedent for examining what effect that might**
16 **have on stock price?**
17 MR. FOX: Objection.
18 That's not his area of expertise.
19 MR. GESSER: I don't know. He seemed
20 to think that he has an area of expertise
21 in indicating what may happen if there were
22 releases.
23 If he says he has no expertise on
24 that, I'm happy to move on.
25 MR. FOX: I think your question went

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1 B. Black
2 **report on AOL which includes a \$60 price target.**
3 MR. FOX: Objection.
4 BY MR. GESSER:
5 **Q. Have you seen this document before?**
6 MR. FOX: What number is this, 12?
7 THE REPORTER: Yes.
8 A. I have.
9 **Q. Okay. And do you know what the**
10 **residual return for AOL's share price close to**
11 **close was on January 16th, 2001?**
12 MR. FOX: Objection.
13 A. I do not.
14 **Q. If I were to tell you that it wasn't**
15 **statistically significant, would that mean**
16 **anything to you?**
17 MR. FOX: Objection.
18 BY MR. GESSER:
19 **Q. In a sense would you understand what**
20 **I was saying, first of all, and then we can go**
21 **on to what the --**
22 A. I would understand what you were
23 saying, yes.
24 **Q. Okay. So and by implication, I can**
25 **tell you that both Professor Stulz and**

1 B. Black
2 beyond that but...
3 A. I would agree that if one were to try
4 to form a quantitative prediction, it would be
5 difficult because of a lack of comparable
6 evidence.
7 **Q. All right. And you indicated**
8 **previously, though, that you thought if Laura**
9 **Martin's report had been issued by itself or**
10 **separate from a Kiggen report issued**
11 **simultaneously, that in your view that that**
12 **report would have a negative impact on the stock**
13 **price.**
14 MR. FOX: Objection.
15 A. I thought that that hypothetical
16 simultaneous publication would be likely to
17 significantly affect investors' overall views as
18 to the likelihood that AOL's sunny story in
19 which the advertising slowdown was not affecting
20 AOL would turn out to be true.
21 **Q. So without further ado, Black-12,**
22 **which as I think you know is a Media Daily**
23 **report that was issued by Credit Suisse on**
24 **January 16th, 2001 in which Laura Martin is**
25 **listed as the top analyst and provides a mini**

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1 B. Black
2 **Dr. Hakala have done analysis of returns of AOL**
3 **during the class period and although they**
4 **disagree on many things, one of things they**
5 **don't disagree on is that there was not a**
6 **statistically significant return of AOL's stock**
7 **price on January 16th, 2001.**
8 MR. FOX: Objection.
9 A. I will accept that representation.
10 **Q. Okay. And what was -- do you know**
11 **what AOL's target price was -- what the CSFB**
12 **price for AOL was at this time according to a**
13 **Jamie Kiggen report?**
14 A. I believe it was either \$75 or \$80.
15 **Q. So --**
16 MR. FOX: Are you saying it was just
17 a Jamie Kiggen report?
18 I'm not clear in the start. You
19 said --
20 MR. GESSER: Okay.
21 BY MR. GESSER:
22 **Q. Well, do you know what the CSFB**
23 **report with Jamie Kiggen's name on it as the top**
24 **analyst was at this time period, in this time**
25 **period?**

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1 **B. Black**
2 A. I believe that the price target for
3 the standalone reports on AOL authored by Jamie
4 Kiggen and Laura Martin was either \$75 or \$80.
5 **Q. Okay.**
6 MR. GESSER: I'm going to mark this
7 as Black-13.
8 (Defendants' Exhibit Black 13, "Desk
9 Notes" dated 1/16/01, marked for
10 identification, as of this date.)
11 BY MR. GESSER:
12 **Q. Just so we don't waste time, I've**
13 **circled it.**
14 **Do you see that it's \$80?**
15 A. January 16th is \$80, yes.
16 **Q. So the difference between the price**
17 **target that is in the Kiggen report and the**
18 **price target that is in the Martin report, and I**
19 **refer to the Exhibit 13 as the Kiggen report and**
20 **Exhibit 12 as the Martin report, that's a**
21 **difference of, depending on what you're**
22 **comparing, either 25 percent or 33 percent; is**
23 **that right?**
24 MR. FOX: Are you asking him to
25 confirm if your math is right, the

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1 **B. Black**
2 **price target by Ms. Martin that was 33 -- well,**
3 **that was 25 percent lower than the price target**
4 **that Mr. Kiggen had issued on the same day or in**
5 **the same time frame, that AOL stock price did**
6 **not react negatively in any statistically**
7 **significant way.**
8 MR. FOX: Objection.
9 **Q. Accepting that as true, does that**
10 **change your view as to whether or not it would**
11 **be likely that a report by Ms. Martin in this**
12 **time frame reflecting her true belief would have**
13 **an effect on the AOL stock price?**
14 MR. FOX: Objection.
15 A. Let me ask you a question.
16 Are you representing that Exhibit 13
17 was public?
18 **Q. Yes.**
19 A. Okay. Even though it has these
20 things like, "Do Not Type Here" and three
21 exclamation points on it and things like this,
22 you're sure it's not a draft?
23 **Q. Yes.**
24 **Well, let's do this: For the purpose**
25 **of my questioning, you can assume that it was**

1 **B. Black**
2 percentages between \$60 and \$80?
3 MR. GESSER: Yes, I'm asking for his
4 expert opinion on the difference between
5 \$60 and \$80 in terms of his math.
6 MR. FOX: Professor Black, can you
7 perform that calculation for Mr. Gesser?
8 MR. GESSER: We'll double check it,
9 believe me but...
10 A. Sixty plus twenty equals eighty the
11 last time I checked.
12 **Q. So that's the difference of a third**
13 **of 60?**
14 A. Eighty percent is four-thirds --
15 Eighty dollars is four-thirds of sixty dollars.
16 **Q. So would you agree that that's a**
17 **significant difference between the two price**
18 **targets?**
19 MR. FOX: Objection.
20 A. I would agree that is an economically
21 significant difference between the two price
22 targets.
23 **Q. And as I represented to you and I**
24 **think you confirmed that you are accepting my**
25 **representation, that despite the issuance of a**

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1 **B. Black**
2 **made public?**
3 A. Okay. Or something with stray marks
4 that otherwise look like this was made public,
5 okay.
6 These look weird to me, so I don't
7 know that an investor would say well, one of
8 these is a Kiggen report and one of them is a
9 Martin report.
10 I think they would say that one of
11 them is this sort of Media Daily by Ryan Pappas
12 that has Martin's and Kiggen's name on it and
13 one of them is a standalone report that has
14 Martin's and Kiggen's name on it.
15 Would an investor really notice that
16 the order was flipped? I'm not sure about that.
17 And so if an investor had both of
18 these together, I think the investor might be a
19 bit puzzled.
20 How many investors had both of them
21 together, I don't know. I gather that the Media
22 Daily circulation was limited.
23 But if you had both of them together,
24 I think you would be mostly puzzled.
25 **Q. Do your think that's responsive to my**

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1 **B. Black**
2 **question?**

3 A. Well --

4 MR. FOX: Objection.

5 I mean I don't think it a complete
6 question by any stretch of the imagination.

7 MR. GESSER: The question is does his
8 view change.

9 MR. FOX: Whose view change?

10 MR. GESSER: His view.

11 MR. FOX: On what?

12 BY MR. GESSER:

13 **Q. Do you understand my question?**

14 A. I --

15 MR. FOX: On the price target?

16 You're saying is his view that --

17 MR. GESSER: You're not even
18 following the questioning.

19 Why don't you let your witness answer
20 the question.

21 MR. FOX: Hold on. Hold on. Because
22 you're not posing a clear question.

23 Are you saying does the January 16th
24 Media Daily report, does that report
25 reflect Laura Martin's view as to the price

1 B. Black

2 target? Is that your question?

3 MR. GESSER: Why don't you listen to
4 the questions because my question is pretty
5 clear.

6 MR. FOX: Why don't you ask a fair
7 question and not an incomplete question
8 about reports which you know were not
9 really public, okay? So why don't you just
10 be fair about it.

11 MR. GESSER: That I know were not
12 really public?

13 I mean we can spend time on efficient
14 market theory and what is and what is not
15 public but...

16 BY MR. GESSER:

17 **Q. I'm going to ask you assuming that**
18 **the Media Daily was distributed in a way that**
19 **was sufficient to satisfy public dissemination**
20 **for the purpose of the efficient market theory**
21 **and that notwithstanding its dissemination, that**
22 **there was no statistically significant impact on**
23 **AOL's stock price, does that change your view**
24 **that had a report been issued that had a dissent**
25 **from Laura Martha that indicated her views along**

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1 **B. Black**
2 **with Jamie Kiggen's views as reflected in the**
3 **January 16th CSFB report, whether that would**
4 **have an impact on the AOL stock price?**

5 MR. FOX: Objection.

6 All of her non-public views or just
7 the price target?

8 MR. GESSER: All of her non-public
9 views that he's aware of that were relevant
10 for his consider -- that are relevant to
11 his conclusions at this time.

12 MR. FOX: Objection.

13 A. Let me see if I can restate my prior
14 view and the hypothetical that I recall it is
15 being based on, which is so imagine we have two
16 competing sort of full reports with analysis and
17 explanation of how they got there, one authored
18 by Jamie Kiggen and one by Laura Martin, and
19 they come out together and CSFB says to
20 investors, here they are, make what you will of
21 both of them together, and I express the opinion
22 that it seems to me quite plausible, even
23 likely, that that would have had a -- that Laura
24 Martin's would have had a significant effect on
25 AOL's share price at that time; that opinion

1 B. Black

2 would not be affected if I also knew that on
3 another date investors had received, let's
4 assume simultaneously in separate attachments to
5 the same email or however they got them, these
6 two apparently inconsistent reports because I
7 don't know that if investors got these together,
8 they would have been anything other than
9 puzzled.

10 Now maybe they might have called up
11 and said, "We don't understand," but these
12 aren't -- these aren't the same things we were
13 discussing before. These are two very, you
14 know, very thin reports. There's some detail on
15 subscribers in Black Exhibit 13 and a different
16 price target, but not the same detail in Black
17 Exhibit 12.

18 But I wouldn't take these as being
19 here's a Martin report and here's a Kiggen
20 report, so I don't think they would affect my
21 opinion on what would hypothetically have
22 happened if there had been two separate reports.

23 **Q. Okay. So when you say what we were**
24 **talking about before, what we were talking about**
25 **before, in your view, is some additional**

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1 **B. Black**
2 **information that Laura Martin -- about some**
3 **additional views of Laura Martin -- that Laura**
4 **Martin had about AOL over and above her price**
5 **target, which you think would have been relevant**
6 **to investors and may have caused them to change**
7 **their mind about AOL such that it could affect**
8 **AOL's stock price; is that correct?**
9 MR. FOX: Objection.
10 A. In part I was answering a
11 hypothetical about what I took to be fully
12 formed opinions, not here's my price target as a
13 one-sentence report and Kiggen saying no, here's
14 my price target as a one-sentence report. That
15 wasn't the hypothetical that I was answering
16 before.
17 **Q. Okay. So looking at, back to**
18 **Black-9, is there anything in Black-9 that you**
19 **think could have been disclosed along with the**
20 **January 16th report from Laura Martin that would**
21 **in fact have had a negative impact on AOL's**
22 **stock price?**
23 MR. FOX: Objection.
24 A. I am not aware of a January 16th
25 report from Laura Martin. I'm sorry.

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1 **B. Black**
2 **So I think that the detailed analysis**
3 **in Black Exhibit 10 of how Laura Martin got to**
4 **the \$60 price target would be much more**
5 **informative to investors than simply a number;**
6 **that the analysis matters, not just the bottom**
7 **line number and it also would have been**
8 **important --**
9 **Q. You're into an exhibit I haven't even**
10 **asked you about yet, so can you just stick with**
11 **my question because otherwise we're going to**
12 **have to have you back here, okay?**
13 **My question was, is there anything in**
14 **nine that if disclosed you think would have an**
15 **impact on AOL's stock price?**
16 A. I suppose my problem is that it feels
17 to me as if you are kind of moving a
18 hypothetical around because I thought the
19 hypothetical was a hypothetical Laura Martin
20 report that says here's what I believe and
21 here's why I believe it, and that would have the
22 kind of detail in it that was in the January
23 12th draft which is in Black Exhibit 10, some of
24 which is not in the January 11th draft that is
25 in Black Exhibit 9.

1 **B. Black**
2 **Q. Well, what do you have in front of**
3 **you?**
4 A. I have --
5 **Q. What's Black-12?**
6 A. The Media Daily.
7 **Q. So the Media Daily.**
8 A. I don't want to call that a Laura
9 Martin report because I don't think that's a
10 fair characterization.
11 **Q. So what would you like to call it?**
12 A. I would like to call it the Media
13 Daily mini report. How's that?
14 **Q. I'm perfectly happy with the Media**
15 **Daily mini report.**
16 A. Okay.
17 **Q. So is there anything in Laura**
18 **Martin's email which is marked as Black-9 which**
19 **had been disclosed in the Media Daily mini**
20 **report of January 16th that you think would have**
21 **caused AOL's stock price to go down?**
22 MR. FOX: Objection.
23 A. There is a...
24 (Document review.)
25 A. Let me look at January 12th.

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1 **B. Black**
2 **Q. I understand the predicament that**
3 **you're in, but in order to move this along, what**
4 **would be helpful for me if you were to say no**
5 **for 9 but for 10, yes, and then we can move on**
6 **to 10 rather than just saying there's stuff in**
7 **10 without answering my question, because that**
8 **makes me to have to ask the question again and**
9 **then we waste time and then I get frustrated**
10 **that we're running out of time, okay?**
11 A. For my part, since my earlier opinion
12 was based on the January 12th report and I
13 hadn't really focused on the January 11th
14 attachment by itself, it would have taken me
15 some time to work my way through the January
16 11th attachment in order to answer your
17 question. So I thought it was simpler and
18 faster to say with regard to the January 12th
19 attachment, there's more information there.
20 **Q. But now you see that it wasn't**
21 **simpler and faster. It's just simpler and**
22 **faster for you to answer my question and then we**
23 **can go on, okay?**
24 A. I don't know. I realize that I've
25 still not answered your question as to January

Page 214

1 B. Black
 2 11 as a whole and if you want me to sit and look
 3 through the report, I can.
 4 **Q. No. That's fine. You can say that,**
 5 **"I don't have an answer to your question, I**
 6 **would need to read the entire report" and then I**
 7 **can decide whether I want you to spend that time**
 8 **or not.**
 9 **Okay? So let's ask the question one**
 10 **more time.**
 11 **Is there anything in Exhibit 9, which**
 12 **is the January 11th email and attached report,**
 13 **that if disclosed to the market you think would**
 14 **have had an impact on AOL stock price?**
 15 A. Possibly, but to have a fuller view,
 16 I would have to take a closer look at Black
 17 Exhibit 9.
 18 **Q. Okay. Because you haven't read the**
 19 **report itself in great detail with this in mind?**
 20 A. That's correct. I read the cover
 21 email, but I focused principally on the one day
 22 later January 12th draft report.
 23 **Q. Okay. But the January 11th report**
 24 **was published. The January 11th report was**
 25 **published so it doesn't matter. All I'm**

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1 B. Black
 2 not.
 3 **Q. Correct.**
 4 A. Okay. Now that I understand that,
 5 can I ask you to restate the question?
 6 **Q. Is there anything in the email that**
 7 **is the front page of Black-9 that if disclosed**
 8 **to the market along with Laura Martin's Media**
 9 **Tech Daily mini report from January 16th in your**
 10 **view would have had a negative impact on AOL's**
 11 **stock price?**
 12 MR. GESSER: No objection, Fred?
 13 A. I don't --
 14 MR. FOX: Objection.
 15 (Laughter.)
 16 A. I don't, I don't -- again, I take the
 17 two January 16th reports put side by side to be
 18 puzzling and not -- I don't treat one as a Laura
 19 Martin report.
 20 It's certainly plausible to me that a
 21 public statement by Laura Martin that she was
 22 seeing substantial weakness in the advertising
 23 market or perhaps a public statement by the,
 24 quote, U.S. media team, close quote, of CSFB to
 25 that effect would have impacted the prices of

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1 **B. Black**
 2 **concerned is about the email.**
 3 **Do you understand?**
 4 MR. FOX: Objection.
 5 BY MR. GESSER:
 6 **Q. I don't care about the report. All I**
 7 **care about is what's in the email, so let me**
 8 **reask the question.**
 9 **Is there anything in the email that**
 10 **is the front page of Dayton-9, I'm sorry,**
 11 **Black-9, that if disclosed would have caused**
 12 **AOL's stock price to drop?**
 13 MR. FOX: Objection.
 14 A. So I'm trying to understand. So
 15 you're representing that the attachment to Black
 16 Exhibit 9 dated January 11th was published.
 17 **Q. Yes. I'm sorry if you were confused**
 18 **about that.**
 19 A. Yes, I was confused about that.
 20 **Q. Okay. I've cleared up that confusion**
 21 **now.**
 22 A. Okay. So January 11th was published,
 23 January 12th was not.
 24 **Q. Correct.**
 25 A. Okay. And the emails of course were

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1 B. Black
 2 companies that were depending on advertising,
 3 including AOL.
 4 **Q. Do you see six lines from the bottom**
 5 **of the email with the line that starts**
 6 **"Personally..."? Do you see that?**
 7 A. Yes.
 8 **Q. She says, "Personally I'm okay with**
 9 **our bullish stance until my earnings estimates**
 10 **go negative for 2001"?**
 11 A. Yes. I do not claim to understand
 12 exactly what she means by that.
 13 **Q. Do you know if her earnings estimates**
 14 **went negative in 2001 at any time in January,**
 15 **February or March of 2001?**
 16 MR. FOX: Objection.
 17 A. I'm not sure what the phrase
 18 "earnings estimates go negative" means.
 19 **Q. Is it possible that she means she's**
 20 **okay with the bullish stance until such time**
 21 **that has not happened yet?**
 22 MR. FOX: Objection.
 23 A. Again, I feel uncomfortable trying to
 24 interpret what she means by this sentence.
 25 **Q. And yet as a whole you feel**

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B. Black

comfortable that whatever is in that sentence, that this email represents views of Laura Martin that were not disclosed in the CSFB reports?

A. This is certainly a piece of her overall views and I do not see the level of concern about the ad market in CSFB's published reports on AOL that I see in Laura Martin's emails.

Q. But you also see that she's okay with the bullish stance, or do you disregard that and only pick the things that you think would be helpful to plaintiffs' case?

MR. FOX: Objection.

A. I want to distinguish -- so the question is what does she mean, I'm speculating here, all right, by, "I am okay with our bullish stance."

Does that mean she believes that it's right or she believes in a world where one often publishes things that one doesn't fully believe anymore, that she's okay with it, that's it's not absurdly unrealistic. I don't know what she means by it.

Q. Have you read her deposition

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B. Black

transcript on this particular email to get a sense of what she might mean?

A. I read the deposition and I don't recall her -- I don't recall testimony about this particular line because I wasn't really focusing on it.

Q. Don't you think this line is fairly important in determining whether or not her true beliefs were represented in Credit Suisse's reports?

If this line means what it looks like it means, at least to me, that she was okay with their numbers, I would think that would be fairly important for you to do some investigation on in whether -- in determining whether or not her views were in fact reflective in AOL's -- in the CSFB published reports for AOL.

MR. FOX: Objection.

A. Let's see. This statement says, "The U.S. media team is out there with a bullish ad stance..."

"Personally I am okay with our bullish stance until..."

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B. Black

I take the sentence "Personally I am okay with our bullish stance..." to be a comment on the overall view of the U.S. media team about the overall national ad market and I don't take that to be her view that they are right.

I think the first paragraph strongly suggests that she doesn't think that they are right.

I'm not sure exactly what it means when she then says, "Personally I'm okay with it..." meaning with not changing it right now, at the same time that she's writing an internal email saying, hey, guys, the national ad market is looking much weaker than five weeks ago and I haven't said this publicly and I have some doubts about the bullish stance of the U.S. media team.

Q. What if she said in her deposition that five weeks is not a lot of data and she was very unsure of the quality of the data that she was getting, and therefore she was happy to go along with the U.S. media team for now because she thought it was improper to reach any conclusions based on such weak data?

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B. Black

MR. FOX: Objection.

A. Do you want to show me the deposition transcript? I don't recall that particular testimony.

Again, I wasn't focusing on this particular sentence or her explanation.

Q. I'm asking you what if that's what it said in the deposition transcript; would that change your view?

A. Would that change my view on what?

Q. Would that change your view on whether her beliefs as reflected in this email were -- should have been disclosed in Credit Suisse's reports?

MR. FOX: Objection.

A. I think I start out being naive and saying well, if something is important and you didn't say it, why didn't you say it?

Q. Do you think that analysts put everything they think may be important into their reports?

A. I think they clearly make judgments on what to put in their reports and what not to, and when to change prior estimates and when not

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1 B. Black
 2 to and...
 3 **Q. So if they see a trend that looks**
 4 **like it may be something but it's too early to**
 5 **tell what it is, is it a reasonable position for**
 6 **them to say, I'm going to wait till I get more**
 7 **data because I think it's improper for me to**
 8 **draw any conclusions based on data that I think**
 9 **is not reliable enough?**
 10 MR. FOX: Objection.
 11 A. Depending on the circumstances, it
 12 certainly could be.
 13 **Q. Okay. You have the Laura Martin**
 14 **deposition in front of you. It's Black-8.**
 15 A. Okay.
 16 **Q. Okay. If you look at page 214,**
 17 **starting with "...and I only have..."**
 18 **Do you see that?**
 19 MR. FOX: You're asking him to start
 20 in the middle of an answer there?
 21 MR. GESSER: Yes.
 22 MR. FOX: Okay.
 23 BY MR. GESSER:
 24 **Q. Do you see this Professor Black?**
 25 A. Yes.

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1 B. Black
 2 that question taking into account what I know
 3 about Laura Martin's views in statements after
 4 January 11th or excluding that in consideration?
 5 So do I sort of shut the window on
 6 January 11th --
 7 **Q. No, no, no. I'm not asking you to**
 8 **shut the window. In light of everything that**
 9 **you want to consider.**
 10 A. So I think I might react the
 11 following way: That at January 11th, Laura
 12 Martin is clearly troubled by what she sees as
 13 adverse developments that are important that she
 14 hasn't yet said publicly.
 15 We also know from later statements
 16 that she was not averse to saying different
 17 things publicly than she believed privately in
 18 some instances.
 19 And I think I read the deposition as
 20 her saying okay, this is the end of 2007, let me
 21 look back and see what I might have meant in
 22 January 2001, and this is my reading, I suppose,
 23 is let me put a spin on it as to how it might
 24 have been consistent with what I was saying
 25 publicly, which doesn't necessarily mean that it

1 B. Black
 2 **Q. "...and I only have five weeks of**
 3 **data"?**
 4 A. Yes.
 5 **Q. It says, "Look, guys, this might be**
 6 **the tip of the iceberg or it might go away.**
 7 **Maybe it's just a December phenomenon. I'm just**
 8 **giving them the option. Do we want to take five**
 9 **weeks of data and all go negative or do we want**
 10 **to watch longer. There's two sets of data; one**
 11 **says everything's fine when one says that's kind**
 12 **of starting, it could be a lead indicator for**
 13 **something that isn't as optimistic as we thought**
 14 **just five short weeks ago."**
 15 **Do you see that?**
 16 A. Yes.
 17 **Q. Do you remember reading that?**
 18 A. Yes.
 19 **Q. Does this in any way inform your**
 20 **opinion as to whether or not there was**
 21 **information contained in the January 11th email**
 22 **that should have been disclosed in the CSFB**
 23 **analyst reports?**
 24 MR. FOX: Objection.
 25 A. I find it -- do you want me to answer

1 B. Black
 2 was fully consistent at the time.
 3 **Q. Well, I'm not quite sure.**
 4 **Are you suggesting that Laura Martin**
 5 **committed perjury when she was testifying?**
 6 A. No.
 7 **Q. You're suggesting that she picked an**
 8 **interpretation of her email that would have been**
 9 **favorable to defendants' interests in this case**
 10 **regardless of whether or not that was consistent**
 11 **with her recollection of what she meant at the**
 12 **time?**
 13 A. I'm speculating, and this is
 14 speculation, that this is six-and-a-half, almost
 15 seven years later and that there are a range of
 16 possible interpretations of what she might have
 17 meant by this particular email, and that she's
 18 giving an interpretation that is within a range
 19 of plausible meanings on the side of more
 20 consistent with CSFB's public statements rather
 21 than an opinion that focuses on the first
 22 paragraph of the email which was more
 23 intentioned with this and later public
 24 statements.
 25 **Q. So --**

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1 **B. Black**
 2 MR. MITCHELL: I move to strike that
 3 part of his testimony, if I can do that, or
 4 I'm going to object to it because it's
 5 complete speculation on your part as to
 6 what her reasons were for her testimony.
 7 You have absolutely no basis to have said
 8 what you said, Professor Black.
 9 BY MR. GESSER:
 10 **Q. Let me just see if I understand what**
 11 **you're saying.**
 12 **What you're saying is if you credited**
 13 **what her testimony was as being an accurate**
 14 **reflection of what she meant, that could affect**
 15 **your opinion, but you don't credit it as**
 16 **accurate because you think her testimony was in**
 17 **some way biased by virtue of her position in**
 18 **this case.**
 19 MR. FOX: Objection.
 20 A. One could certainly not rule out the
 21 possibility of bias in ex post interpretation.
 22 **Q. Do you know if Laura Martin has**
 23 **financial exposure in this case?**
 24 A. No.
 25 **Q. Going back to your report at the top**

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1 B. Black
 2 when she was employed by CSFB.
 3 **Q. I see.**
 4 **So that's not -- so when you -- so**
 5 **while we're crossing out things in your report**
 6 **that are wrong, we can add to that the term "the**
 7 **class period," that should be from the time that**
 8 **Laura Martin was at Credit Suisse?**
 9 MR. FOX: Objection.
 10 A. I would accept a revision that said
 11 during some of the class period, or conversely I
 12 do not take the assumption to have an implicit
 13 word "all" in it. It doesn't say during all of
 14 the class period.
 15 **Q. Okay. All right. That is a strained**
 16 **reading but just for the sake of accuracy, if I**
 17 **were to put in during the portion of the class**
 18 **period that Laura Martin was employed by Credit**
 19 **Suisse, would that be accurate?**
 20 A. I think I would want to not offer an
 21 opinion that every day during this class period
 22 she had the belief stated in paragraph 1 and
 23 instead saying said that, you know, based on the
 24 factual record available to me, there are
 25 certainly times, maybe chunks of time during the

1 **B. Black**
 2 **of page 4, you say "During the class period,**
 3 **Laura Martin did not believe that AOL Time**
 4 **Warner would meet its guidance."**
 5 A. Is there a question?
 6 **Q. Do you see that?**
 7 A. Yes. That's part of what assumption
 8 one says.
 9 **Q. What's the class period?**
 10 A. My understanding is that it starts in
 11 early January, it may start on January 11th, I'm
 12 not sure exactly, and it ends sometime in 2002.
 13 **Q. July 2002?**
 14 A. I don't recall exactly.
 15 **Q. I'm going to represent to you that it**
 16 **ends in July 2002.**
 17 **Is that what you meant, that during**
 18 **from January 2001 to July 2002 Laura Martin did**
 19 **not believe that AOL Time Warner would meet its**
 20 **guidance?**
 21 MR. FOX: Objection.
 22 A. Well, I'm also aware that at some
 23 point during this period she became unemployed,
 24 at least unemployed by CSFB. So presumably
 25 assumption one would be limited to the period

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1 B. Black
 2 period within the class period when she was
 3 employed by CSFB when she did not -- when, you
 4 know, she did not believe that AOL would meet
 5 its guidance or CSFB's public estimates.
 6 **Q. Okay. Let me ask you this: From**
 7 **October of 2001 through July of 2002, do you**
 8 **have any basis for the assertion that Laura**
 9 **Martin did not believe that AOL Time Warner**
 10 **would meet its guidance?**
 11 A. I don't believe that assumption one
 12 makes that assertion and I do not make it.
 13 **Q. Okay. So to the extent that**
 14 **assumption one could be read to include periods**
 15 **of the class period after Laura Martin left**
 16 **Credit Suisse, you would say that that is not**
 17 **accurate.**
 18 MR. FOX: Objection.
 19 A. That is not how I read this
 20 assumption.
 21 **Q. Let's turn to the third assumption,**
 22 **which we haven't been giving much attention; but**
 23 **that is, that "At least as early as March 15,**
 24 **2001, Jamie Kiggen did not believe that AOL Time**
 25 **Warner would meet either its guidance for CSFB**

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Page 231

1 **B. Black**
2 **public estimates or revenue and EBITDA"?**
3 A. If you're moving to a new topic, can
4 I take a short break?
5 **Q. Sure.**
6 THE VIDEOGRAPHER: Going off the
7 record. The time is 4:13 p.m.
8 (Recess is taken.)
9 THE VIDEOGRAPHER: We are back on the
10 record. The time is 4:24 p.m.
11 This is the beginning of the tape
12 labeled No. 5.
13 BY MR. GESSER:
14 **Q. Just before we took a break, I was**
15 **asking about the third assumption that's listed**
16 **on the top of page 4 and I was just reading it**
17 **to you, but just so we're all on the same page**
18 **I'm going to read it to you again.**
19 It says, "At least as early as March
20 15th, 2001, Jamie Kiggen did not believe that
21 AOL Time Warner would meet either its guidance
22 or CSFB's public estimates for revenue and
23 EBITDA."
24 Do you see that assumption?
25 A. Yes.

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1 B. Black
2 A. There are a series of emails over the
3 period of the second half of March, March 15th
4 through the end of March roughly, that suggest
5 to me that at that time Mr. Kiggen did not
6 believe that AOL would meet CSFB's estimates,
7 which also meant it wouldn't meet its guidance.
8 Thereafter the news from AOL only
9 gets worse and CSFB's public estimates don't
10 come down much at all until September, so it's
11 not likely that he changed his view and became
12 more optimistic about AOL as the numbers got
13 worse.
14 So it's likely that he maintained his
15 opinion throughout that period, but the only
16 documents I have, I think, are in the second
17 half of March, but then I couple that with I
18 don't see anything in -- anything much in the
19 factual record to suggest that he would have had
20 a basis for changing his views and becoming more
21 optimistic after that.
22 **Q. Okay. Just so I understand your**
23 **answer, because it was for the most part not**
24 **responsive, other than the March 15th email, you**
25 **think there are other emails in the March time**

1 B. Black
2 **Q. Is that an assumption that you tested**
3 **and/or came to a view upon or is that something**
4 **you simply assumed to be true irrespective of**
5 **what evidence you saw in the course of your work**
6 **on this case?**
7 MR. FOX: Objection.
8 A. My recollection is that there is an
9 email from Jamie Kiggen dated March 15th that
10 indicates that he wanted to bring down CSFB's
11 estimates. That's the basis for the starting
12 date there.
13 **Q. Okay. Are there emails -- it says,**
14 **"At least as early as March 15th..."**
15 **Are there other emails or other**
16 **internal communications from Mr. Kiggen after**
17 **March 15th that also led you to believe that he**
18 **didn't believe that AOL Time Warner would meet**
19 **its guidance or CSFB's public estimates for**
20 **revenue and EBITDA, or is the March 15th email**
21 **the only document that you saw in the course of**
22 **your work on this case that leads you to believe**
23 **that Jamie Kiggen did not believe his numbers**
24 **for AOL Time Warner at any period in time?**
25 MR. FOX: Objection.

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1 B. Black
2 **frame after March 15th that lead you to believe**
3 **that Mr. Kiggen didn't believe his own numbers**
4 **for AOL Time Warner, but after that you don't**
5 **know of any particular document that you saw**
6 **that would lead you to that conclusion; is that**
7 **correct?**
8 A. I think after that I have no reason
9 to think that his disbelief would have changed
10 given what we know happened between the end of
11 March and let's call it September 25th about AOL
12 and about CSFB's public statements.
13 **Q. All right. So let's take a look at**
14 **the email I think you're referring to, which**
15 **we're going to mark as Black-14.**
16 **(Defendants' Exhibit Black 14, Series**
17 **of emails including email dated 3/15/01**
18 **from Watters to Wang and Martin, marked for**
19 **identification, as of this date.)**
20 BY MR. GESSER:
21 **Q. Is this in fact the email that you**
22 **were referring to?**
23 A. The second half of this, the message
24 from Catherine Watters to Patrick Wang and Laura
25 Martin, is what I'm referring to as the March